

106TH CONGRESS
1ST SESSION

S. 900

AN ACT

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Financial Services Modernization Act of 1999”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG BANKS,
 SECURITIES FIRMS, AND INSURANCE COMPANIES

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act repealed.

Sec. 102. Financial activities.

Sec. 103. Conforming amendments.

Sec. 104. Operation of State law.

Subtitle B—Streamlining Supervision of Bank Holding Companies

Sec. 111. Streamlining bank holding company supervision.

Sec. 112. Authority of State insurance regulator and Securities and Exchange
 Commission.

Sec. 113. Role of the Board of Governors of the Federal Reserve System.

Sec. 114. Examination of investment companies.

Sec. 115. Equivalent regulation and supervision.

Sec. 116. Interagency consultation.

Sec. 117. Preserving the integrity of FDIC resources.

Subtitle C—Activities of National Banks

Sec. 121. Authority of national banks to underwrite municipal revenue bonds.

Sec. 122. Subsidiaries of national banks.

Sec. 123. Agency activities.

Sec. 124. Prohibiting fraudulent representations.

Sec. 125. Insurance underwriting by national banks.

Subtitle D—National Treatment of Foreign Financial Institutions

Sec. 151. National treatment of foreign financial institutions.

Sec. 152. Representative offices.

TITLE II—INSURANCE CUSTOMER PROTECTIONS

Sec. 201. Functional regulation of insurance.

Sec. 202. Insurance customer protections.

Sec. 203. Federal and State dispute resolution.

TITLE III—REGULATORY IMPROVEMENTS

Sec. 301. Elimination of SAIF and DIF special reserves.

Sec. 302. Expanded small bank access to S corporation treatment.

Sec. 303. Meaningful CRA examinations.

Sec. 304. Financial information privacy protection.

Sec. 305. Cross marketing restriction; limited purpose bank relief; divestiture.

Sec. 306. “Plain language” requirement for Federal banking agency rules.

Sec. 307. Retention of “Federal” in name of converted Federal savings associa-
 tion.

Sec. 308. Community Reinvestment Act exemption.

- Sec. 309. Bank officers and directors as officers and directors of public utilities.
- Sec. 310. Control of bankers' banks.
- Sec. 311. Multistate licensing and interstate insurance sales activities.
- Sec. 312. CRA sunshine requirements.
- Sec. 313. Interstate branches and agencies of foreign banks.
- Sec. 314. Disclosures to consumers under the Truth in Lending Act.
- Sec. 315. Approval for purchases of securities.
- Sec. 316. Provision of technical assistance to microenterprises
- Sec. 317. Federal reserve audits.
- Sec. 318. Study and report on advertising practices of online brokerage services.
- Sec. 319. Eligibility of community development financial institution to borrow from the Federal Home Loan Bank system.

TITLE IV—FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Savings association membership.
- Sec. 404. Advances to members; collateral.
- Sec. 405. Eligibility criteria.
- Sec. 406. Management of banks.
- Sec. 407. Resolution Funding Corporation.
- Sec. 408. GAO study on Federal Home Loan Bank System capital.

TITLE V—FUNCTIONAL REGULATION OF BROKERS AND DEALERS

- Sec. 501. Definition of broker.
- Sec. 502. Definition of dealer.
- Sec. 503. Definition and treatment of banking products.
- Sec. 504. Qualified investor defined.
- Sec. 505. Government securities defined.
- Sec. 506. Effective date.
- Sec. 507. Rule of construction.

TITLE VI—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 601. Prevention of creation of new S&L holding companies with commercial affiliates.
- Sec. 602. Optional conversion of Federal savings associations.

TITLE VII—ATM FEE REFORM

- Sec. 701. Short title.
- Sec. 702. Electronic fund transfer fee disclosures at any host ATM.
- Sec. 703. Disclosure of possible fees to consumers when ATM card is issued.
- Sec. 704. Feasibility study.
- Sec. 705. No liability if posted notices are damaged.

1 **TITLE I—FACILITATING AFFILI-**
 2 **ATION AMONG BANKS, SECUR-**
 3 **ITIES FIRMS, AND INSUR-**
 4 **ANCE COMPANIES**

5 **Subtitle A—Affiliations**

6 **SEC. 101. GLASS-STEAGALL ACT REPEALED.**

7 (a) SECTION 20 REPEALED.—Section 20 of the
 8 Banking Act of 1933 (12 U.S.C. 377) (commonly referred
 9 to as the “Glass-Steagall Act”) is repealed.

10 (b) SECTION 32 REPEALED.—Section 32 of the
 11 Banking Act of 1933 (12 U.S.C. 78) is repealed.

12 **SEC. 102. FINANCIAL ACTIVITIES.**

13 (a) IN GENERAL.—Section 4 of the Bank Holding
 14 Company Act of 1956 (12 U.S.C. 1843) is amended by
 15 adding at the end the following new subsections:

16 “(k) ENGAGING IN ACTIVITIES THAT ARE FINAN-
 17 CIAL IN NATURE.—

18 “(1) IN GENERAL.—Notwithstanding subsection
 19 (a), a bank holding company may engage in any ac-
 20 tivity, and may acquire and retain the shares of any
 21 company engaged in any activity, that the Board, in
 22 coordination with the Secretary of the Treasury, de-
 23 termines (by regulation or order) to be financial in
 24 nature or incidental to such financial activities.

1 “(2) COORDINATION BETWEEN THE BOARD
2 AND THE SECRETARY OF THE TREASURY.—

3 “(A) PROPOSALS RAISED BEFORE THE
4 BOARD.—

5 “(i) CONSULTATION.—The Board
6 shall notify the Secretary of the Treasury
7 of, and consult with the Secretary of the
8 Treasury concerning, any request, pro-
9 posal, or application under this subsection
10 for a determination of whether an activity
11 is financial in nature or incidental to such
12 a financial activity.

13 “(ii) TREASURY VIEW.—The Board
14 shall not determine that any activity is fi-
15 nancial in nature or incidental to a finan-
16 cial activity under this subsection if the
17 Secretary of the Treasury notifies the
18 Board in writing, not later than 30 days
19 after the date of receipt of the notice de-
20 scribed in clause (i) (or such longer period
21 as the Board determines to be appropriate
22 in light of the circumstances) that the Sec-
23 retary of the Treasury believes that the ac-
24 tivity is not financial in nature or inci-
25 dental to a financial activity.

1 “(B) PROPOSALS RAISED BY THE TREAS-
2 URY.—

3 “(i) TREASURY RECOMMENDATION.—
4 The Secretary of the Treasury may, at any
5 time, recommend in writing that the Board
6 find an activity to be financial in nature or
7 incidental to a financial activity.

8 “(ii) TIME PERIOD FOR BOARD AC-
9 TION.—Not later than 30 days after the
10 date of receipt of a written recommenda-
11 tion from the Secretary of the Treasury
12 under clause (i) (or such longer period as
13 the Secretary of the Treasury and the
14 Board determine to be appropriate in light
15 of the circumstances), the Board shall de-
16 termine whether to initiate a public rule-
17 making proposing that the subject rec-
18 ommended activity be found to be financial
19 in nature or incidental to a financial activ-
20 ity under this subsection, and shall notify
21 the Secretary of the Treasury in writing of
22 the determination of the Board and, in the
23 event that the Board determines not to
24 seek public comment on the proposal, the
25 reasons for that determination.

1 “(3) FACTORS TO BE CONSIDERED.—The
2 Board shall determine that an activity is financial in
3 nature or incidental to financial activities, if the
4 Board finds that such activity is consistent with—

5 “(A) the purposes of this Act and the Fi-
6 nancial Services Modernization Act of 1999;

7 “(B) changes or reasonably expected
8 changes in the marketplace in which bank hold-
9 ing companies compete;

10 “(C) changes or reasonably expected
11 changes in the technology for delivering finan-
12 cial services; and

13 “(D) fostering—

14 “(i) effective competition with any
15 company seeking to provide financial serv-
16 ices in the United States;

17 “(ii) the efficient delivery of informa-
18 tion and services that are financial in na-
19 ture through the use of technological
20 means, including any application necessary
21 to protect the security or efficacy of sys-
22 tems for the transmission of data or finan-
23 cial transactions; and

1 “(iii) the provision to customers of
2 any available or emerging technological
3 means for using financial services.

4 “(4) ACTIVITIES THAT ARE FINANCIAL IN NA-
5 TURE.—For purposes of this subsection, the fol-
6 lowing activities shall be considered to be financial
7 in nature:

8 “(A) Lending, exchanging, transferring, in-
9 vesting for others, or safeguarding money or se-
10 curities.

11 “(B) Insuring, guaranteeing, or indem-
12 nifying against loss, harm, damage, illness, dis-
13 ability, or death, or providing and issuing annu-
14 ities, and acting as principal, agent, or broker
15 for purposes of the foregoing, in any State, in
16 full compliance with the laws and regulations of
17 that State that apply to each type of insurance
18 license or authorization in that State.

19 “(C) Providing financial, investment, or
20 economic advisory services, including advising
21 an investment company (as defined in section 3
22 of the Investment Company Act of 1940).

23 “(D) Issuing or selling instruments rep-
24 resenting interests in pools of assets permissible
25 for a bank to hold directly.

1 “(E) Underwriting, dealing in, or making
2 a market in securities.

3 “(F) Engaging in any activity that the
4 Board has determined, by order or regulation
5 that is in effect on the date of enactment of the
6 Financial Services Modernization Act of 1999,
7 to be so closely related to banking or managing
8 or controlling banks as to be a proper incident
9 thereto (subject to the same terms and condi-
10 tions contained in such order or regulation, un-
11 less modified by the Board).

12 “(G) Engaging, in the United States, in
13 any activity that—

14 “(i) a bank holding company may en-
15 gage in outside of the United States; and

16 “(ii) the Board has determined, under
17 regulations issued pursuant to subsection
18 (c)(13) (as in effect on the day before the
19 date of enactment of the Financial Services
20 Modernization Act of 1999) to be usual in
21 connection with the transaction of banking
22 or other financial operations abroad.

23 “(H) Directly or indirectly acquiring or
24 controlling, whether as principal, on behalf of 1
25 or more entities (including entities, other than

1 a depository institution or subsidiary of a de-
2 pository institution that the bank holding com-
3 pany controls), or otherwise, shares, assets, or
4 ownership interests (including debt or equity se-
5 curities, partnership interests, trust certificates,
6 or other instruments representing ownership) of
7 a company or other entity, whether or not con-
8 stituting control of such company or entity, en-
9 gaged in any activity not authorized pursuant
10 to this section if—

11 “(i) the shares, assets, or ownership
12 interests are not acquired or held by a de-
13 pository institution or subsidiary of a de-
14 pository institution; and

15 “(ii) such shares, assets, or ownership
16 interests are acquired and held by—

17 (I) a securities affiliate or an af-
18 filiate thereof; or

19 (II) an affiliate of an insurance
20 company described in paragraph
21 (I)(ii) that provides investment advice
22 to an insurance company and is reg-
23 istered pursuant to the Investment
24 Advisers Act of 1940, or an affiliate
25 of such investment adviser, as part of

1 a bona fide underwriting or merchant
2 banking activity, including investment
3 activities engaged in for the purpose
4 of appreciation and ultimate resale or
5 disposition of the investment.

6 “(I) Directly or indirectly acquiring or con-
7 trolling, whether as principal, on behalf of 1 or
8 more entities (including entities, other than a
9 depository institution or subsidiary of a deposi-
10 tory institution, that the bank holding company
11 controls), or otherwise, shares, assets, or owner-
12 ship interests (including debt or equity securi-
13 ties, partnership interests, trust certificates or
14 other instruments representing ownership) of a
15 company or other entity, whether or not consti-
16 tuting control of such company or entity, en-
17 gaged in any activity not authorized pursuant
18 to this section if—

19 “(i) the shares, assets, or ownership
20 interests are not acquired or held by a de-
21 pository institution or a subsidiary of a de-
22 pository institution;

23 “(ii) such shares, assets, or ownership
24 interests are acquired and held by an in-
25 surance company that is predominantly en-

1 gaged in underwriting life, accident and
2 health, or property and casualty insurance
3 (other than credit-related insurance) or
4 providing and issuing annuities; and

5 “(iii) such shares, assets, or owner-
6 ship interests represent, as determined by
7 the insurance authority of the State of
8 domicile of the insurance company, an in-
9 vestment made in the ordinary course of
10 business of such insurance company in ac-
11 cordance with relevant State law governing
12 such investments.

13 “(J) Activities that the Board determines
14 (by regulation or order) are complementary to
15 financial activities, or any other service that the
16 Board determines (by regulation or order) not
17 to pose a substantial risk to the safety or
18 soundness of depository institutions or the fi-
19 nancial system generally.

20 “(5) ACTIONS REQUIRED.—

21 “(A) IN GENERAL.—The Board shall, by
22 regulation or order, define, consistent with the
23 purposes of this Act, the activities described in
24 subparagraph (B) as financial in nature, and
25 the extent to which such activities are financial

1 in nature or incidental to activities that are fi-
2 nancial in nature.

3 “(B) ACTIVITIES.—The activities described
4 in this subparagraph are—

5 “(i) lending, exchanging, transferring,
6 investing for others, or safeguarding finan-
7 cial assets other than money or securities;

8 “(ii) providing any device or other in-
9 strumentality for transferring money or
10 other financial assets;

11 “(iii) arranging, effecting, or facili-
12 tating financial transactions for the ac-
13 count of third parties; and

14 “(iv) activities that are complemen-
15 tary to financial activities, or any other
16 service that the Board determines (by reg-
17 ulation or order) not to pose a substantial
18 risk to the safety or soundness of deposi-
19 tory institutions or the financial system
20 generally.

21 “(6) REQUIRED NOTIFICATION.—

22 “(A) IN GENERAL.—A bank holding com-
23 pany that acquires any company or commences
24 any activity pursuant to this subsection shall
25 provide written notice to the Board describing

1 the activity commenced or conducted by the
2 company acquired not later than 30 calendar
3 days after commencing the activity or consum-
4 mating the acquisition, as applicable.

5 “(B) APPROVAL NOT REQUIRED FOR CER-
6 TAIN FINANCIAL ACTIVITIES.—Except as pro-
7 vided in subsection (j) with regard to the acqui-
8 sition of a savings association, a bank holding
9 company may commence any activity, or ac-
10 quire any company, pursuant to paragraph (4)
11 or any regulation prescribed or order issued
12 under paragraph (5), without prior approval of
13 the Board.

14 “(I) CONDITIONS FOR ENGAGING IN EXPANDED FI-
15 NANCIAL ACTIVITIES.—

16 “(1) IN GENERAL.—Notwithstanding subsection
17 (k), a bank holding company may not engage in any
18 activity, or directly or indirectly acquire or retain
19 shares of any company engaged in any activity,
20 under subsection (k), other than activities permis-
21 sible for a bank holding company under subsection
22 (c)(8), unless—

23 “(A) all of the insured depository institu-
24 tion subsidiaries of the bank holding company
25 are well capitalized;

1 “(B) all of the insured depository institu-
2 tion subsidiaries of the bank holding company
3 are well managed; and

4 “(C) the bank holding company has filed
5 with the Board—

6 “(i) a declaration that the company
7 elects to engage in activities or acquire and
8 retain shares of a company which were not
9 permissible for a bank holding company to
10 engage in or acquire before the enactment
11 of the Financial Services Modernization
12 Act of 1999; and

13 “(ii) a certification that the company
14 meets the requirements of subparagraphs
15 (A) and (B).

16 “(2) FOREIGN BANKS.—For purposes of para-
17 graph (1), the Board shall apply comparable capital
18 and management standards to a foreign bank that
19 operates a branch or agency or owns or controls a
20 commercial lending company in the United States,
21 giving due regard to the principle of national treat-
22 ment and equality of competitive opportunity.

23 “(3) DEFINITIONS.—For purposes of this
24 subsection—

1 “(A) the term ‘well capitalized’ has the
2 same meaning as in section 38 of the Federal
3 Deposit Insurance Act;

4 “(B) the term ‘well managed’ means—

5 “(i) in the case of a depository insti-
6 tution that has been examined, unless oth-
7 erwise determined in writing by the appro-
8 priate Federal banking agency—

9 “(I) the achievement of a com-
10 posite rating of 1 or 2 under the Uni-
11 form Financial Institutions Rating
12 System (or an equivalent rating under
13 an equivalent rating system) in con-
14 nection with the most recent examina-
15 tion or subsequent review of the de-
16 pository institution; and

17 “(II) at least a rating of 2 for
18 management, if that rating is given;

19 “(ii) in the case of any depository in-
20 stitution that has not been examined, the
21 existence and use of managerial resources
22 that the appropriate Federal banking agen-
23 cy determines are satisfactory; and

24 “(iii) the terms ‘appropriate Federal
25 banking agency’ and ‘depository institu-

1 tion’ have the same meanings as in section
2 3 of the Federal Deposit Insurance Act.

3 “(m) PROVISIONS APPLICABLE TO BANK HOLDING
4 COMPANIES THAT FAIL TO MEET CERTAIN REQUIRE-
5 MENTS.—

6 “(1) IN GENERAL.—If the Board finds that—

7 “(A) a bank holding company is engaged,
8 directly or indirectly, in any activity under sub-
9 section (k), other than activities that are per-
10 missible for a bank holding company under sub-
11 section (c)(8); and

12 “(B) such bank holding company is not in
13 compliance with the requirements of subsection
14 (l),

15 the Board shall give notice to the bank holding com-
16 pany to that effect, describing the conditions giving
17 rise to the notice.

18 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
19 QUIRED.—Not later than 45 days after the date of
20 receipt by a bank holding company of a notice given
21 under paragraph (1) (or such additional period as
22 the Board may permit), the bank holding company
23 shall execute an agreement with the Board to com-
24 ply with the requirements applicable to a bank hold-
25 ing company under subsection (l).

1 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
2 the conditions described in a notice to a bank hold-
3 ing company under paragraph (1) are corrected, the
4 Board may impose such limitations on the conduct
5 or activities of that bank holding company or any af-
6 filiate of that company as the Board determines to
7 be appropriate under the circumstances and con-
8 sistent with the purposes of this Act.

9 “(4) FAILURE TO CORRECT.—If the conditions
10 described in a notice to a bank holding company
11 under paragraph (1) are not corrected within 180
12 days after the date of receipt by the bank holding
13 company of a notice under paragraph (1), the Board
14 may require such bank holding company, under such
15 terms and conditions as may be imposed by the
16 Board and subject to such extension of time as may
17 be granted in the discretion of the Board, either—

18 “(A) to divest control of any subsidiary in-
19 sured depository institutions; or

20 “(B) to cease to engage in any activity
21 conducted by such bank holding company or its
22 subsidiaries (other than a depository institution
23 or a subsidiary of a depository institution) that
24 is not an activity that is permissible for a bank
25 holding company under subsection (c)(8).

1 “(n) AUTHORITY TO RETAIN COMMODITY ACTIVI-
 2 TIES AND AFFILIATIONS.—Notwithstanding subsection
 3 (a), a company that is not a bank holding company or
 4 a foreign bank (as defined in section 1(b)(7) of the Inter-
 5 national Banking Act of 1978) and becomes a bank hold-
 6 ing company after the date of enactment of the Financial
 7 Services Modernization Act of 1999, may continue to en-
 8 gage in, or directly or indirectly own or control shares of
 9 a company engaged in, activities related to the trading,
 10 sale, or investment in commodities and underlying phys-
 11 ical properties that were not permissible for bank holding
 12 companies to conduct in the United States as of Sep-
 13 tember 30, 1997, if—

14 “(1) the bank holding company, or any sub-
 15 sidiary of the bank holding company, lawfully was
 16 engaged, directly or indirectly, in any of such activi-
 17 ties as of September 30, 1997, in the United States;

18 “(2) the attributed aggregate consolidated as-
 19 sets of the company held by the bank holding com-
 20 pany pursuant to this subsection, and not otherwise
 21 permitted to be held by a bank holding company, are
 22 equal to not more than 5 percent of the total con-
 23 solidated assets of the bank holding company, except
 24 that the Board may increase that percentage by
 25 such amounts and under such circumstances as the

1 Board considers appropriate, consistent with the
2 purposes of this Act; and

3 “(3) the bank holding company does not
4 permit—

5 “(A) any company, the shares of which it
6 owns or controls pursuant to this subsection, to
7 offer or market any product or service of an af-
8 filiated insured depository institution; or

9 “(B) any affiliated insured depository in-
10 stitution to offer or market any product or serv-
11 ice of any company, the shares of which are
12 owned or controlled by such bank holding com-
13 pany pursuant to this subsection.”.

14 (b) FINANCIAL ACTIVITIES OF BANK HOLDING COM-
15 PANIES INELIGIBLE FOR SUBSECTION (k) POWERS.—

16 (1) IN GENERAL.—Section 4(c)(8) of the Bank
17 Holding Company Act of 1956 (12 U.S.C.
18 1843(c)(8)) is amended to read as follows:

19 “(8) shares of any company, the activities of
20 which had been determined by the Board by regula-
21 tion or order under this paragraph as of the day be-
22 fore the date of enactment of the Financial Services
23 Modernization Act of 1999, to be so closely related
24 to banking as to be a proper incident thereto (sub-

1 ject to such terms and conditions contained in such
2 regulation, unless modified by the Board);”.

3 (2) CONFORMING CHANGES TO OTHER STAT-
4 UTES.—

5 (A) AMENDMENT TO THE BANK HOLDING
6 COMPANY ACT AMENDMENTS OF 1970.—Section
7 105 of the Bank Holding Company Act Amend-
8 ments of 1970 (12 U.S.C. 1850) is amended by
9 striking “, to engage directly or indirectly in a
10 nonbanking activity pursuant to section 4 of
11 such Act,”.

12 (B) AMENDMENT TO THE BANK SERVICE
13 COMPANY ACT.—Section 4(f) of the Bank Serv-
14 ice Company Act (12 U.S.C. 1864(f)) is amend-
15 ed by striking the period at the end and insert-
16 ing the following: “as of the day before the date
17 of enactment of the Financial Services Mod-
18 ernization Act of 1999.”.

19 **SEC. 103. CONFORMING AMENDMENTS.**

20 Section 10(c)(2)(F)(i) of the Home Owners’ Loan
21 Act (12 U.S.C. 1467a(c)(2)(F)(i))is amended—

22 (1) by inserting “is permitted for bank holding
23 companies under subsection (c) or (k) of section 4
24 of the Bank Holding Company Act of 1956, or
25 which” after “(i) which”; and

1 (2) by striking “section 4(c)” and inserting
2 “subsection (c) or (k) of section 4”.

3 **SEC. 104. OPERATION OF STATE LAW.**

4 (a) STATE REGULATION OF THE BUSINESS OF IN-
5 SURANCE.—The Act entitled “An Act to express the intent
6 of Congress with reference to the regulation of the busi-
7 ness of insurance” and approved March 9, 1945 (15
8 U.S.C. 1011 et seq.), commonly referred to as the
9 “McCarran-Ferguson Act” remains the law of the United
10 States.

11 (b) MANDATORY INSURANCE LICENSING REQUIRE-
12 MENTS.—No person or entity shall provide insurance in
13 a State as principal or agent unless such person or entity
14 is licensed, as required by the appropriate insurance regu-
15 lator of such State in accordance with the relevant State
16 insurance laws, subject to subsections (c), (d), and (e).

17 (c) AFFILIATIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), no State may, by statute, regulation,
20 order, interpretation, or other action, prevent or re-
21 strict the affiliations authorized or permitted by this
22 Act and the amendments made by this Act.

23 (2) INSURANCE.—With respect to affiliations
24 between insured depository institutions, or any sub-
25 sidiary or affiliate thereof, and persons or entities

1 engaged in the business of insurance, paragraph (1)
2 does not prohibit any State from collecting, review-
3 ing, and taking actions on required applications and
4 other documents or reports as may be necessary con-
5 cerning proposed acquisitions, changes, or continu-
6 ations of control of any entity engaged in the busi-
7 ness of insurance and domiciled in that State, if the
8 State actions do not have the practical effect of dis-
9 criminating, either intentionally or unintentionally,
10 against an insured depository institution or a sub-
11 sidiary or affiliate thereof, or against any person or
12 entity based upon affiliation with an insured deposi-
13 tory institution.

14 (d) ACTIVITIES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (3), and except with respect to insurance
17 sales, solicitation, and cross marketing activities,
18 which shall be governed by paragraph (2), no State
19 may, by statute, regulation, order, interpretation or
20 other action, prevent or restrict an insured deposi-
21 tory institution or subsidiary or affiliate thereof
22 from engaging directly or indirectly, either by itself
23 or in conjunction with a subsidiary, affiliate, or any
24 other entity or person, in any activity authorized or

1 permitted under this Act and the amendments made
2 by this Act.

3 (2) INSURANCE SALES.—

4 (A) IN GENERAL.—In accordance with the
5 legal standards for preemption set forth in the
6 decision of the Supreme Court of the United
7 States in *Barnett Bank of Marion County N.A.*
8 *v. Nelson*, 116 S. Ct. 1103 (1996), no State
9 may, by statute, regulation, order, interpreta-
10 tion, or other action, prevent or significantly
11 interfere with the ability of an insured deposi-
12 tory institution, or a subsidiary or affiliate
13 thereof, to engage, directly or indirectly, either
14 by itself or in conjunction with a subsidiary, af-
15 filiate, or any other party, in any insurance
16 sales, solicitation, or cross-marketing activity.

17 (B) CERTAIN STATE LAWS PRESERVED.—

18 Notwithstanding subparagraph (A), a State
19 may impose any of the following restrictions, or
20 restrictions that are substantially the same as
21 but no more burdensome or restrictive than
22 those in each of the following clauses:

23 (i) Restrictions prohibiting the rejec-
24 tion of an insurance policy solely because
25 the policy has been issued or underwritten

1 by any person not associated with such in-
2 sured depository institution, or any sub-
3 sidiary or affiliate thereof, when such in-
4 surance is required in connection with a
5 loan or extension of credit.

6 (ii) Restrictions prohibiting a require-
7 ment for any debtor, insurer, or insurance
8 agent or broker to pay a separate charge
9 in connection with the handling of insur-
10 ance that is required in connection with a
11 loan or other extension of credit or the
12 provision of another traditional banking
13 product, unless such charge would be re-
14 quired when the insured depository institu-
15 tion, or any subsidiary or affiliate thereof,
16 is the licensed insurance agent or broker
17 providing the insurance.

18 (iii) Restrictions prohibiting the use of
19 any advertisement or other insurance pro-
20 motional material by an insured depository
21 institution, or any subsidiary or affiliate
22 thereof, that would cause a reasonable per-
23 son to believe mistakenly that—

24 (I) a State or the Federal Gov-
25 ernment is responsible for the insur-

1 ance sales activities of, or stands be-
2 hind the credit of, the institution, af-
3 filiate, or subsidiary; or

4 (II) a State, or the Federal Gov-
5 ernment guarantees any returns on
6 insurance products, or is a source of
7 payment on any insurance obligation
8 of or sold by the institution, affiliate,
9 or subsidiary.

10 (iv) Restrictions prohibiting the pay-
11 ment or receipt of any commission or bro-
12 kerage fee or other valuable consideration
13 for services as an insurance agent or
14 broker to or by any person, unless such
15 person holds a valid State license regard-
16 ing the applicable class of insurance at the
17 time at which the services are performed,
18 except that, in this clause, the term “serv-
19 ices as an insurance agent or broker” does
20 not include a referral by an unlicensed per-
21 son of a customer or potential customer to
22 a licensed insurance agent or broker that
23 does not include a discussion of specific in-
24 surance policy terms and conditions.

1 (v) Restrictions prohibiting any com-
2 pensation paid to or received by any indi-
3 vidual who is not licensed to sell insurance
4 for the referral of a customer that seeks to
5 purchase, or seeks an opinion or advice on,
6 any insurance product to a person that
7 sells or provides opinions or advice on such
8 product, based on the purchase of insur-
9 ance by the customer.

10 (vi) Restrictions prohibiting the re-
11 lease of the insurance information of a cus-
12 tomer (defined as information concerning
13 the premiums, terms, and conditions of in-
14 surance coverage, including expiration
15 dates and rates, and insurance claims of a
16 customer contained in the records of the
17 insured depository institution, or a sub-
18 sidiary or affiliate thereof) to any person
19 or entity other than an officer, director,
20 employee, agent, subsidiary, or affiliate of
21 an insured depository institution, for the
22 purpose of soliciting or selling insurance,
23 without the express consent of the cus-
24 tomer, other than a provision that
25 prohibits—

1 (I) a transfer of insurance infor-
2 mation to an unaffiliated insurance
3 company, agent, or broker in connec-
4 tion with transferring insurance in
5 force on existing insureds of the in-
6 sured depository institution, or sub-
7 sidiary or affiliate thereof, or in con-
8 nection with a merger with or acquisi-
9 tion of an unaffiliated insurance com-
10 pany, agent, or broker; or

11 (II) the release of information as
12 otherwise authorized by Federal or
13 State law.

14 (vii) Restrictions prohibiting the use
15 of health information obtained from the in-
16 surance records of a customer for any pur-
17 pose, other than for its activities as a li-
18 censed agent or broker, without the ex-
19 press consent of the customer.

20 (viii) Restrictions prohibiting the ex-
21 tension of credit (or any product or service
22 that is equivalent to an extension of cred-
23 it), lease or sale of property of any kind,
24 or furnishing of any services or fixing or
25 varying the consideration for any of the

1 foregoing, on the condition or requirement
2 that the customer obtain insurance from
3 the insured depository institution, a sub-
4 sidiary or affiliate thereof, or a particular
5 insurer, agent, or broker, other than a pro-
6 hibition that would prevent any insured de-
7 pository institution, or any subsidiary or
8 affiliate thereof—

9 (I) from engaging in any activity
10 that would not violate section 106 of
11 the Bank Holding Company Act
12 Amendments of 1970, as interpreted
13 by the Board of Governors of the Fed-
14 eral Reserve System; or

15 (II) from informing a customer
16 or prospective customer that insur-
17 ance is required in order to obtain a
18 loan or credit, that loan or credit ap-
19 proval is contingent upon the procure-
20 ment by the customer of acceptable
21 insurance, or that insurance is avail-
22 able from the insured depository insti-
23 tution, or any subsidiary or affiliate
24 thereof.

1 (ix) Restrictions requiring, when an
2 application by a customer for a loan or
3 other extension of credit from an insured
4 depository institution is pending, and in-
5 surance is offered or sold to the customer
6 or is required in connection with the loan
7 or extension of credit by the insured depos-
8 itory institution or any subsidiary or affil-
9 iate thereof, that a written disclosure be
10 provided to the customer or prospective
11 customer indicating that his or her choice
12 of an insurance provider will not affect the
13 credit decision or credit terms in any way,
14 except that the insured depository institu-
15 tion may impose reasonable requirements
16 concerning the creditworthiness of the in-
17 surance provider and scope of coverage
18 chosen.

19 (x) Restrictions, requiring clear and
20 conspicuous disclosure, in writing where
21 practicable, to the customer prior to the
22 sale of any insurance policy that such
23 policy—

24 (I) is not a deposit;

1 (II) is not insured by the Federal
2 Deposit Insurance Corporation;

3 (III) is not guaranteed by the in-
4 sured depository institution or, if ap-
5 propriate, its subsidiaries or affiliates
6 or any person soliciting the purchase
7 of or selling insurance on the premises
8 thereof; and

9 (IV) where appropriate, involves
10 investment risk, including potential
11 loss of principal.

12 (xi) Restrictions requiring that, when
13 a customer obtains insurance (other than
14 credit insurance or flood insurance) and
15 credit from an insured depository institu-
16 tion or its subsidiaries or affiliates, or any
17 person soliciting the purchase of or selling
18 insurance on the premises thereof, the
19 credit and insurance transactions be com-
20 pleted through separate documents.

21 (xii) Restrictions prohibiting, when a
22 customer obtains insurance (other than
23 credit insurance or flood insurance) and
24 credit from an insured depository institu-
25 tion or its subsidiaries or affiliates, or any

1 person soliciting the purchase of or selling
2 insurance on the premises thereof, inclu-
3 sion of the expense of insurance premiums
4 in the primary credit transaction without
5 the express written consent of the cus-
6 tomer.

7 (xiii) Restrictions requiring—

8 (I) maintenance of separate and
9 distinct books and records relating to
10 insurance transactions, including all
11 files relating to and reflecting cus-
12 tomer complaints; and

13 (II) that such insurance books
14 and records be made available to the
15 appropriate State insurance regulator
16 for inspection upon reasonable notice.

17 (C) LIMITATIONS.—

18 (i) OCC DEFERENCE.—Section 203(e)
19 does not apply with respect to any State
20 statute, regulation, order, interpretation,
21 or other action regarding insurance sales,
22 solicitation, or cross marketing activities
23 described in subparagraph (A) that was
24 issued, adopted, or enacted before Sep-

tember 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in *Barnett Bank of Marion County N.A. v. Nelson*, 116 S. Ct. 1103 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this paragraph; or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other

1 action that is not referred to in this
2 paragraph.

3 (3) INSURANCE ACTIVITIES OTHER THAN
4 SALES.—State statutes, regulations, interpretations,
5 orders, and other actions shall not be preempted
6 under paragraph (1) to the extent that they—

7 (A) relate to, or are issued, adopted, or en-
8 acted for the purpose of regulating the business
9 of insurance in accordance with the Act of
10 March 9, 1945 (commonly known as the
11 “McCarran-Ferguson Act”);

12 (B) apply only to persons or entities that
13 are not insured depository institutions, but that
14 are directly engaged in the business of insur-
15 ance (except that they may apply to depository
16 institutions engaged in providing savings bank
17 life insurance as principal to the extent of regu-
18 lating such insurance);

19 (C) do not relate to or directly or indirectly
20 regulate insurance sales, solicitations, or cross
21 marketing activities; and

22 (D) are not prohibited under subsection
23 (e).

24 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
25 ANCE.—No State statute, regulation, interpretation,

1 order, or other action shall be preempted under
2 paragraph (1) to the extent that—

3 (A) it does not relate to, and is not issued
4 and adopted, or enacted for the purpose of reg-
5 ulating, directly or indirectly, insurance sales,
6 solicitations, or cross marketing activities cov-
7 ered under paragraph (2);

8 (B) it does not relate to, and is not issued
9 and adopted, or enacted for the purpose of reg-
10 ulating, directly or indirectly, the business of in-
11 surance activities other than sales, solicitations,
12 or cross marketing activities, covered under
13 paragraph (3);

14 (C) it does not relate to securities inves-
15 tigations or enforcement actions referred to in
16 subsection (f); and

17 (D) it is not prohibited under subsection
18 (e).

19 (e) NONDISCRIMINATION.—Except as provided in any
20 restriction described in subsection (d)(2)(B), no State
21 may, by statute, regulation, order, interpretation, or other
22 action, regulate the activities authorized or permitted
23 under this Act and the amendments made by this Act,
24 or any other provision of Federal law, of an insured depos-
25 itory institution, or subsidiary or affiliate thereof, to the

1 extent that such statute, regulation, order, interpretation,
2 or other action—

3 (1) distinguishes by its terms between insured
4 depository institutions, or subsidiaries or affiliates
5 thereof, and other persons or entities engaged in
6 such activities, in a manner that is in any way ad-
7 verse to any such insured depository institution, or
8 subsidiary or affiliate thereof;

9 (2) as interpreted or applied, has or will have
10 an impact on insured depository institutions, or sub-
11 sidiaries or affiliates thereof, that is substantially
12 more adverse than its impact on other persons or
13 entities providing the same products or services or
14 engaged in the same activities that are not insured
15 depository institutions, or subsidiaries or affiliates
16 thereof, or persons or entities affiliated therewith;

17 (3) effectively prevents an insured depository
18 institution, or subsidiary or affiliate thereof, from
19 engaging in activities authorized or permitted by this
20 Act and the amendments made by this Act, or any
21 other provision of Federal law; or

22 (4) conflicts with the intent of this Act and the
23 amendments made by this Act generally to permit
24 affiliations that are authorized or permitted by Fed-
25 eral law.

1 (f) LIMITATION.—Subsections (c) and (d) shall not
 2 be construed to affect—

3 (1) the jurisdiction of the securities commission
 4 (or any agency or office performing like functions)
 5 of any State, under the laws of that State, to inves-
 6 tigate and bring enforcement actions, consistent with
 7 section 18(c) of the Securities Act of 1933, with re-
 8 spect to fraud or deceit or unlawful conduct by any
 9 person, in connection with securities or securities
 10 transactions; or

11 (2) State laws, regulations, orders, interpreta-
 12 tions, or other actions of general applicability relat-
 13 ing to the governance of corporations, partnerships,
 14 limited liability companies, or other business associa-
 15 tions incorporated or formed under the laws of that
 16 State or domiciled in that State, or the applicability
 17 of the antitrust laws of any State or any State law
 18 that is similar to the antitrust laws if such laws, reg-
 19 ulations, interpretations, orders, or other actions are
 20 not inconsistent with the purposes of this Act to au-
 21 thorize or permit certain affiliations and to remove
 22 barriers to such affiliations.

23 (g) CERTAIN STATE AFFILIATION LAWS PREEMPTED
 24 FOR INSURANCE COMPANIES AND AFFILIATES.—Except

1 as provided in subsection (c)(2), no State may, by law,
2 regulation, order, interpretation, or otherwise—

3 (1) prevent or restrict the ability of any insurer,
4 or any affiliate of an insurer (whether such affiliate
5 is organized as a stock company, mutual holding
6 company, or otherwise), to become a bank holding
7 company, or to acquire control of an insured deposi-
8 tory institution, where the practical effect of such
9 State action would be to discriminate, intentionally
10 or unintentionally, against an insurer, or any affil-
11 iate of an insurer, based upon its affiliation with an
12 insured depository institution;

13 (2) limit the amount of the assets of an insurer
14 that may be invested in the voting securities of an
15 insured depository institution (or any company that
16 controls such institution), except that the laws of the
17 State of domicile of the insurer may limit the
18 amount of such investment to an amount that is not
19 less than 5 percent of the admitted assets of the in-
20 surer; or

21 (3) prevent, restrict, or have the authority to
22 review, approve, or disapprove a plan of reorganiza-
23 tion by which an insurer proposes to reorganize from
24 mutual form to become a stock insurer (whether as
25 a direct or indirect subsidiary of a mutual holding

1 company or otherwise), unless the State is the State
 2 of domicile of the insurer, except that the appro-
 3 priate regulatory authority of the State of domicile
 4 of the insurer shall consult with the appropriate reg-
 5 ulatory authority in other States in which the in-
 6 surer conducts business, regarding issues affecting
 7 the best interests of policyholders.

8 (h) MOTOR VEHICLE RENTAL AGENCY ACTIVI-
 9 TIES.—

10 (1) FINDINGS.—Congress finds that—

11 (A) in many States, the insurance laws are
 12 unclear as to whether personal insurance sales
 13 in connection with the short-term rental or leas-
 14 ing of motor vehicles should be licensed by the
 15 State as an insurance activity; and

16 (B) in those States that have not yet im-
 17 plemented regulations governing the offer or
 18 sale of insurance in connection with the short-
 19 term lease or rental of a motor vehicle, a pre-
 20 sumption should exist that no insurance license
 21 is required in connection with such sales.

22 (2) EXCEPTION FOR CERTAIN INSURANCE
 23 PRODUCTS.—Subsection (b) does not apply to any
 24 person or entity who offers or provides insurance an-
 25 cillary to a short-term lease or rental transaction of

1 a motor vehicle in a State that does not, by statute,
2 rule, or regulation, impose any licensing, appoint-
3 ment, personal or corporate qualifications, or edu-
4 cation requirements on such persons or entities.

5 (3) CONSTRUCTION.—Nothing in this sub-
6 section shall be construed to alter the validity or ef-
7 fect of any State law, or the prospective application
8 of any final State statute, rule, or regulation which,
9 by its specific terms, expressly regulates or exempts
10 from regulation any person or entity who offers or
11 provides insurance ancillary to a short-term lease or
12 rental transaction of a motor vehicle.

13 (4) LEASE PERIOD.—For purposes of this sub-
14 section, a person shall be considered to be providing
15 insurance ancillary to a short-term lease or rental
16 transaction of a motor vehicle if the lease or rental
17 transaction is for 60 days or less, and the insurance
18 is provided for a period of consecutive days not ex-
19 ceeding the length of the lease or rental.

20 (5) EFFECT.—This subsection shall remain in
21 effect during the period beginning on the date of en-
22 actment of this Act and ending 5 years after that
23 date of enactment.

24 (i) DEFINITIONS.—For purposes of this section—

1 (1) the term “antitrust laws” has the same
 2 meaning as in subsection (a) of the first section of
 3 the Clayton Act, and includes section 5 of the Fed-
 4 eral Trade Commission Act (to the extent that such
 5 section 5 relates to unfair methods of competition);

6 (2) the term “insured depository institution”
 7 has the same meaning as in section 3 of the Federal
 8 Deposit Insurance Act; and

9 (3) the term “State” means any State of the
 10 United States, the District of Columbia, any terri-
 11 tory of the United States, Puerto Rico, Guam,
 12 American Samoa, the Trust Territory of the Pacific
 13 Islands, the Virgin Islands, and the Northern Mar-
 14 iana Islands.

15 **Subtitle B—Streamlining Super-**
 16 **vision of Bank Holding Compa-**
 17 **nies**

18 **SEC. 111. STREAMLINING BANK HOLDING COMPANY SU-**
 19 **PERVISION.**

20 Section 5(c) of the Bank Holding Company Act of
 21 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

22 “(c) REPORTS AND EXAMINATIONS.—

23 “(1) REPORTS.—

24 “(A) IN GENERAL.—The Board, from time
 25 to time, may require a bank holding company

1 and any subsidiary of such company to submit
2 reports under oath to keep the Board informed
3 as to—

4 “(i) the financial condition of the
5 bank holding company or subsidiary, sys-
6 tems for monitoring and controlling finan-
7 cial and operating risks, and transactions
8 with depository institution subsidiaries of
9 the bank holding company; and

10 “(ii) compliance by the company or
11 subsidiary with applicable provisions of
12 this Act.

13 “(B) USE OF EXISTING REPORTS.—

14 “(i) IN GENERAL.—For purposes of
15 compliance with this paragraph, the Board
16 shall, to the fullest extent possible,
17 accept—

18 “(I) reports that a bank holding
19 company or any subsidiary of such
20 company has provided or been re-
21 quired to provide to other Federal or
22 State supervisors or to appropriate
23 self-regulatory organizations;

1 “(II) information that is other-
2 wise required to be reported publicly;
3 and

4 “(III) externally audited financial
5 statements.

6 “(ii) REPORTS FILED WITH OTHER
7 AGENCIES.—In the event that the Board
8 requires a report under this subsection
9 from a functionally regulated subsidiary of
10 a bank holding company of a kind that is
11 not required by another Federal or State
12 regulatory authority or an appropriate self-
13 regulatory organization, the Board shall
14 request that the appropriate regulatory au-
15 thority or self-regulatory organization ob-
16 tain such report. If the report is not made
17 available to the Board, and the report is
18 necessary to assess a material risk to the
19 bank holding company or any of its deposi-
20 tory institution subsidiaries or compliance
21 with this Act, the Board may require such
22 functionally regulated subsidiary to provide
23 such a report to the Board.

24 “(2) EXAMINATIONS.—

1 “(A) EXAMINATION AUTHORITY FOR BANK
2 HOLDING COMPANIES AND SUBSIDIARIES.—
3 Subject to subparagraph (B), the Board may
4 make examinations of each bank holding com-
5 pany and each subsidiary of such holding com-
6 pany in order—

7 “(i) to inform the Board of the nature
8 of the operations and financial condition of
9 the holding company and such subsidiaries;

10 “(ii) to inform the Board of—

11 “(I) the financial and operational
12 risks within the holding company sys-
13 tem that may pose a threat to the
14 safety and soundness of any deposi-
15 tory institution subsidiary of such
16 holding company; and

17 “(II) the systems for monitoring
18 and controlling such risks; and

19 “(iii) to monitor compliance with the
20 provisions of this Act and those governing
21 transactions and relationships between any
22 depository institution subsidiary and its af-
23 filiates.

24 “(B) FUNCTIONALLY REGULATED SUB-
25 SIDIARIES.—Notwithstanding subparagraph

1 (A), the Board may make examinations of a
2 functionally regulated subsidiary of a bank
3 holding company only if—

4 “(i) the Board has reasonable cause
5 to believe that such subsidiary is engaged
6 in activities that pose a material risk to an
7 affiliated depository institution; or

8 “(ii) based on reports and other avail-
9 able information, the Board has reasonable
10 cause to believe that a subsidiary is not in
11 compliance with this Act or with provisions
12 relating to transactions with an affiliated
13 depository institution, and the Board can-
14 not make such determination through ex-
15 amination of the affiliated depository insti-
16 tution or the bank holding company.

17 “(C) RESTRICTED FOCUS OF EXAMINA-
18 TIONS.—The Board shall, to the fullest extent
19 possible, limit the focus and scope of any exam-
20 ination of a bank holding company to—

21 “(i) the bank holding company; and

22 “(ii) any subsidiary of the bank hold-
23 ing company that could have a materially
24 adverse effect on the safety and soundness

1 of any depository institution subsidiary of
2 the holding company due to—

3 “(I) the size, condition, or activi-
4 ties of the subsidiary; or

5 “(II) the nature or size of trans-
6 actions between the subsidiary and
7 any depository institution that is also
8 a subsidiary of the bank holding com-
9 pany.

10 “(D) DEFERENCE TO BANK EXAMINA-
11 TIONS.—The Board shall, to the fullest extent
12 possible, for the purposes of this paragraph, use
13 the reports of examinations of depository insti-
14 tutions made by the appropriate Federal and
15 State depository institution supervisory author-
16 ity.

17 “(E) DEFERENCE TO OTHER EXAMINA-
18 TIONS.—The Board shall, to the fullest extent
19 possible, forego an examination by the Board
20 under this paragraph and instead review the re-
21 ports of examination made of—

22 “(i) any registered broker or dealer by
23 or on behalf of the Securities and Ex-
24 change Commission;

1 “(ii) any registered investment adviser
2 properly registered by or on behalf of ei-
3 ther the Securities and Exchange Commis-
4 sion or any State;

5 “(iii) any licensed insurance company
6 by or on behalf of any State regulatory au-
7 thority responsible for the supervision of
8 insurance companies; and

9 “(iv) any other subsidiary that the
10 Board finds to be comprehensively super-
11 vised by a Federal or State authority.

12 “(3) CAPITAL.—

13 “(A) IN GENERAL.—The Board may not,
14 by regulation, guideline, order, or otherwise,
15 prescribe or impose any capital or capital ade-
16 quacy rules, guidelines, standards, or require-
17 ments on any subsidiary of a bank holding com-
18 pany that—

19 “(i) is not an insured depository insti-
20 tution; and

21 “(ii) is—

22 “(I) in compliance with the appli-
23 cable capital requirements of another
24 Federal regulatory authority (includ-
25 ing the Securities and Exchange Com-

1 mission) or State insurance authority;
2 or

3 “(II) properly registered as an
4 investment adviser under the Invest-
5 ment Advisers Act of 1940, or with
6 any State.

7 “(B) RULE OF CONSTRUCTION.—Subpara-
8 graph (A) shall not be construed as preventing
9 the Board from imposing capital or capital ade-
10 quacy rules, guidelines, standards, or require-
11 ments with respect to activities of a registered
12 investment adviser other than with respect to
13 investment advisory activities or activities inci-
14 dental to investment advisory activities.

15 “(C) LIMITATIONS ON INDIRECT AC-
16 TION.—In developing, establishing, or assessing
17 bank holding company capital or capital ade-
18 quacy rules, guidelines, standards, or require-
19 ments for purposes of this paragraph, the
20 Board may not take into account the activities,
21 operations, or investments of an affiliated in-
22 vestment company registered under the Invest-
23 ment Company Act of 1940, if the investment
24 company is not—

25 “(i) a bank holding company; or

1 “(ii) controlled by a bank holding
2 company by reason of ownership by the
3 bank holding company (including through
4 all of its affiliates) of 25 percent or more
5 of the shares of the investment company,
6 where the shares owned by the bank hold-
7 ing company have a market value equal to
8 more than \$1,000,000.

9 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
10 PROPRIATE FEDERAL BANKING AGENCY.—

11 “(A) IN GENERAL.—In the case of any
12 bank holding company that is not significantly
13 engaged in nonbanking activities, the Board, in
14 consultation with the appropriate Federal bank-
15 ing agency, may designate the appropriate Fed-
16 eral banking agency of the lead insured deposi-
17 tory institution subsidiary of such holding com-
18 pany as the appropriate Federal banking agen-
19 cy for the bank holding company.

20 “(B) AUTHORITY TRANSFERRED.—An
21 agency designated by the Board under subpara-
22 graph (A) shall have the same authority as the
23 Board under this Act—

24 “(i) to examine and require reports
25 from the bank holding company and any

1 affiliate of such company (other than a de-
2 pository institution) under this section;

3 “(ii) to approve or disapprove applica-
4 tions or transactions under section 3;

5 “(iii) to take actions and impose pen-
6 alties under subsections (e) and (f) of this
7 section and under section 8; and

8 “(iv) to take actions regarding the
9 holding company, any affiliate of the hold-
10 ing company (other than a depository insti-
11 tution), or any institution-affiliated party
12 of such company or affiliate under the
13 Federal Deposit Insurance Act and any
14 other statute that the Board may des-
15 ignate.

16 “(C) AGENCY ORDERS.—Section 9 of this
17 Act and section 105 of the Bank Holding Com-
18 pany Act Amendments of 1970 shall apply to
19 orders issued by an agency designated under
20 subparagraph (A) in the same manner as such
21 sections apply to orders issued by the Board.

22 “(5) FUNCTIONAL REGULATION OF SECURITIES
23 AND INSURANCE ACTIVITIES.—

24 “(A) SECURITIES ACTIVITIES.—Securities
25 activities conducted in a functionally regulated

1 subsidiary of a bank shall be subject to regula-
2 tion by the Securities and Exchange Commis-
3 sion, and by relevant State securities authori-
4 ties, as appropriate, subject to section 104 of
5 the Financial Services Modernization Act of
6 1999, to the same extent as if they were con-
7 ducted in a nondepository institution subsidiary
8 of a bank holding company.

9 “(B) INSURANCE ACTIVITIES.—Subject to
10 section 104 of the Financial Services Mod-
11 ernization Act of 1999, insurance agency and
12 brokerage activities and activities as principal
13 conducted in a functionally regulated subsidiary
14 of a bank shall be subject to regulation by a
15 State insurance authority to the same extent as
16 if they were conducted in a nondepository insti-
17 tution subsidiary of a bank holding company.

18 “(6) DEFINITION.—For purposes of this sub-
19 section, the term ‘functionally regulated subsidiary’
20 means any company—

21 “(A) that is not a bank holding company;

22 and

23 “(B) that is—

1 “(i) a broker or dealer that is reg-
2 istered under the Securities Exchange Act
3 of 1934;

4 “(ii) a registered investment adviser,
5 properly registered by or on behalf of ei-
6 ther the Securities and Exchange Commis-
7 sion or any State, with respect to the in-
8 vestment advisory activities of such invest-
9 ment adviser and activities incidental to
10 such investment advisory activities;

11 “(iii) an investment company that is
12 registered under the Investment Company
13 Act of 1940;

14 “(iv) an insurance company or insur-
15 ance agency that is subject to supervision
16 by a State insurance commission, agency,
17 or similar authority; or

18 “(v) an entity that is subject to regu-
19 lation by the Commodity Futures Trading
20 Commission, with respect to the commod-
21 ities activities of such entity and activities
22 incidental to such commodities activities.”.

1 **SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR**
 2 **AND SECURITIES AND EXCHANGE COMMIS-**
 3 **SION.**

4 Section 5 of the Bank Holding Company Act of 1956
 5 (12 U.S.C. 1844) is amended by adding at the end the
 6 following new subsection:

7 “(g) **AUTHORITY OF STATE INSURANCE REGULATOR**
 8 **AND THE SECURITIES AND EXCHANGE COMMISSION.—**

9 “(1) **IN GENERAL.**—Notwithstanding any other
 10 provision of law, any regulation, order, or other ac-
 11 tion of the Board that requires a bank holding com-
 12 pany to provide funds or other assets to an insured
 13 depository institution subsidiary shall not be effec-
 14 tive nor enforceable, if—

15 “(A) such funds or assets are to be pro-
 16 vided by—

17 “(i) a bank holding company that is
 18 an insurance company or that is a broker
 19 or dealer registered under the Securities
 20 Exchange Act of 1934; or

21 “(ii) an affiliate of the insured deposi-
 22 tory institution that is an insurance com-
 23 pany or a broker or dealer registered under
 24 the Securities Exchange Act of 1934; and

25 “(B) the State insurance authority for the
 26 insurance company or the Securities and Ex-

1 change Commission for the registered broker or
2 dealer, as the case may be, determines in a
3 written notice sent to the bank holding com-
4 pany and to the Board that the bank holding
5 company shall not provide such funds or assets
6 because such action would have a material ad-
7 verse effect on the financial condition of the in-
8 surance company or the broker or dealer, as the
9 case may be.

10 “(2) NOTICE TO STATE INSURANCE AUTHORITY
11 OR SEC REQUIRED.—If the Board requires a bank
12 holding company, or an affiliate of a bank holding
13 company, that is an insurance company or a broker
14 or dealer, as described in paragraph (1)(A), to pro-
15 vide funds or assets to an insured depository institu-
16 tion subsidiary of the bank holding company pursu-
17 ant to any regulation, order, or other action of the
18 Board referred to in paragraph (1), the Board shall
19 promptly notify the State insurance authority for the
20 insurance company or the Securities and Exchange
21 Commission, as the case may be, of such require-
22 ment.

23 “(3) DIVESTITURE IN LIEU OF OTHER AC-
24 TION.—If the Board receives a notice described in
25 paragraph (1)(B) from a State insurance authority

1 or the Securities and Exchange Commission with re-
2 gard to a bank holding company or affiliate referred
3 to in that paragraph, the Board may order the bank
4 holding company to divest the insured depository in-
5 stitution subsidiary not later than 180 days after re-
6 ceiving the notice, or such longer period as the
7 Board determines to be consistent with the safe and
8 sound operation of the insured depository institu-
9 tion.

10 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
11 ing the period beginning on the date on which an
12 order to divest is issued by the Board under para-
13 graph (3) to a bank holding company and ending on
14 the date on which the divestiture is completed, the
15 Board may impose any conditions or restrictions on
16 ownership or operation by the bank holding company
17 of the insured depository institution, including re-
18 stricting or prohibiting transactions between the in-
19 sured depository institution and any affiliate of the
20 institution, as are appropriate under the cir-
21 cumstances.

22 “(5) RULE OF CONSTRUCTION.—No provision
23 of this subsection may be construed to limit or oth-
24 erwise affect the regulatory authority, including the
25 scope of the authority, of any Federal agency or de-

1 partment with regard to any entity that is within the
2 jurisdiction of such agency or department.”.

3 **SEC. 113. ROLE OF THE BOARD OF GOVERNORS OF THE**
4 **FEDERAL RESERVE SYSTEM.**

5 The Bank Holding Company Act of 1956 (12 U.S.C.
6 1841 et seq.) is amended by inserting after section 10 the
7 following new section:

8 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
9 **PERVISORY, AND ENFORCEMENT AUTHORITY**
10 **OF THE BOARD.**

11 “(a) LIMITATION ON DIRECT ACTION.—The Board
12 may not prescribe regulations, issue or seek entry of or-
13 ders, impose restraints, restrictions, guidelines, require-
14 ments, safeguards, or standards, or otherwise take any ac-
15 tion under or pursuant to any provision of this Act or sec-
16 tion 8 of the Federal Deposit Insurance Act against or
17 with respect to a functionally regulated subsidiary of a
18 bank holding company unless—

19 “(1) the action is necessary to prevent or re-
20 dress an unsafe or unsound practice or breach of fi-
21 duciary duty by such subsidiary that poses a mate-
22 rial risk to—

23 “(A) the financial safety, soundness, or
24 stability of an affiliated insured depository in-
25 stitution; or

1 “(B) the domestic or international pay-
2 ment system; and

3 “(2) the Board finds that it is not reasonably
4 possible to protect effectively against the material
5 risk at issue through action directed at or against
6 the affiliated insured depository institution or
7 against insured depository institutions generally.

8 “(b) LIMITATION ON INDIRECT ACTION.—The Board
9 may not prescribe regulations, issue or seek entry of or-
10 ders, impose restraints, restrictions, guidelines, require-
11 ments, safeguards, or standards, or otherwise take any ac-
12 tion under or pursuant to any provision of this Act or sec-
13 tion 8 of the Federal Deposit Insurance Act against or
14 with respect to a bank holding company where the purpose
15 or effect of doing so would be to take action indirectly
16 against or with respect to a functionally regulated sub-
17 sidiary of a bank holding company that may not be taken
18 directly against or with respect to such subsidiary in ac-
19 cordance with subsection (a).

20 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
21 withstanding subsection (a), the Board may take action
22 under this Act or section 8 of the Federal Deposit Insur-
23 ance Act to enforce compliance by a functionally regulated
24 subsidiary of a bank holding company with Federal law

1 that the Board has specific jurisdiction to enforce against
2 such subsidiary.

3 “(d) ‘FUNCTIONALLY REGULATED SUBSIDIARY’ DE-
4 FINED.—For purposes of this section, the term ‘function-
5 ally regulated subsidiary’ has the same meaning as in sec-
6 tion 5(c)(6).”.

7 **SEC. 114. EXAMINATION OF INVESTMENT COMPANIES.**

8 (a) EXCLUSIVE COMMISSION AUTHORITY.—Except
9 as provided in subsection (c), a Federal banking agency
10 may not inspect or examine any registered investment
11 company that is not a bank holding company or a savings
12 and loan holding company.

13 (b) EXAMINATION RESULTS AND OTHER INFORMA-
14 TION.—The Commission shall provide to any Federal
15 banking agency, upon request, the results of any examina-
16 tion, reports, records, or other information with respect
17 to any registered investment company to the extent nec-
18 essary for the agency to carry out its statutory responsibil-
19 ities.

20 (c) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
21 ing in this section shall prevent the Corporation, if the
22 Corporation finds it necessary to determine the condition
23 of an insured depository institution for insurance pur-
24 poses, from examining an affiliate of any insured deposi-
25 tory institution, pursuant to its authority under section

1 10(b)(4) of the Federal Deposit Insurance Act, as may
2 be necessary to disclose fully the relationship between the
3 insured depository institution and the affiliate, and the ef-
4 fect of such relationship on the insured depository institu-
5 tion.

6 (d) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 (1) BANK HOLDING COMPANY.—The term
9 “bank holding company” has the same meaning as
10 in section 2 of the Bank Holding Company Act of
11 1956.

12 (2) CORPORATION.—The term “Corporation”
13 means the Federal Deposit Insurance Corporation.

14 (3) COMMISSION.—The term “Commission”
15 means the Securities and Exchange Commission.

16 (4) FEDERAL BANKING AGENCY.—The term
17 “Federal banking agency” has the same meaning as
18 in section 3(z) of the Federal Deposit Insurance Act.

19 (5) REGISTERED INVESTMENT COMPANY.—The
20 term “registered investment company” means an in-
21 vestment company that is registered with the Com-
22 mission under the Investment Company Act of 1940.

23 (6) SAVINGS AND LOAN HOLDING COMPANY.—
24 The term “savings and loan holding company” has

1 the same meaning as in section 10(a)(1)(D) of the
2 Home Owners' Loan Act.

3 **SEC. 115. EQUIVALENT REGULATION AND SUPERVISION.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of law, the provisions of—

6 (1) section 5(c) of the Bank Holding Company
7 Act of 1956 (as amended by this Act) that limit the
8 authority of the Board of Governors of the Federal
9 Reserve System to require reports from, to make ex-
10 aminations of, or to impose capital requirements on
11 holding companies and their functionally regulated
12 subsidiaries or that require deference to other regu-
13 lators;

14 (2) section 5(g) of the Bank Holding Company
15 Act of 1956 (as added by this Act) that limit the au-
16 thority of the Board to require capital from a func-
17 tionally regulated subsidiary of a holding company
18 to an insured depository institution subsidiary of the
19 holding company and to take certain actions includ-
20 ing requiring divestiture of the insured depository
21 institution; and

22 (3) section 10A of the Bank Holding Company
23 Act of 1956 (as added by this Act) that limit what-
24 ever authority the Board might otherwise have to
25 take direct or indirect action with respect to holding

1 companies and their functionally regulated subsidi-
2 aries,
3 shall also limit whatever authority that a Federal banking
4 agency (as defined in section 3 of the Federal Deposit In-
5 surance Act) might otherwise have under applicable Fed-
6 eral law to require reports, make examinations, impose
7 capital requirements, or take any other direct or indirect
8 action with respect to any functionally regulated sub-
9 sidiary of an insured depository institution, subject to the
10 same standards and requirements as are applicable to the
11 Board under those provisions.

12 (b) CERTAIN EXEMPTION AUTHORIZED.—Nothing in
13 this section shall prevent the Federal Deposit Insurance
14 Corporation, if the Corporation finds it necessary to deter-
15 mine the condition of an insured depository institution for
16 insurance purposes, from examining an affiliate of any in-
17 sured depository institution, pursuant to its authority
18 under section 10(b)(4) of the Federal Deposit Insurance
19 Act, as may be necessary to disclose fully the relationship
20 between the depository institution and the affiliate, and
21 the effect of such relationship on the depository institu-
22 tion.

23 (c) “FUNCTIONALLY REGULATED SUBSIDIARY” DE-
24 FINED.—For purposes of this section, the term “function-
25 ally regulated subsidiary” has the same meaning as in sec-

1 tion 5(c)(6) of the Bank Holding Company Act of 1956,
2 as amended by this Act.

3 **SEC. 116. INTERAGENCY CONSULTATION.**

4 (a) EXAMINATION RESULTS AND OTHER INFORMA-
5 TION.—

6 (1) INFORMATION OF THE BOARD.—Upon the
7 request of the appropriate insurance regulator of
8 any State, the Board may provide to that regulator
9 any information of the Board regarding the financial
10 condition, risk management policies, and operations
11 of any bank holding company that controls a com-
12 pany that is engaged in insurance activities and is
13 regulated by that State insurance regulator, and re-
14 garding any transaction or relationship between such
15 an insurance company and any affiliated depository
16 institution. The Board may provide any other infor-
17 mation to the appropriate State insurance regulator
18 that the Board believes is necessary or appropriate
19 to permit the State insurance regulator to admin-
20 ister and enforce applicable State insurance laws.

21 (2) BANKING AGENCY INFORMATION.—Upon
22 the request of the appropriate insurance regulator of
23 any State, the appropriate Federal banking agency
24 may provide to that regulator any information of the
25 agency regarding any transaction or relationship be-

1 tween a depository institution supervised by that
2 Federal banking agency and any affiliated company
3 that is engaged in insurance activities regulated by
4 the State insurance regulator. The appropriate Fed-
5 eral banking agency may provide any other informa-
6 tion to the appropriate State insurance regulator
7 that the agency believes is necessary or appropriate
8 to permit the State insurance regulator to admin-
9 ister and enforce applicable State insurance laws.

10 (3) STATE INSURANCE REGULATOR INFORMA-
11 TION.—Upon the request of the appropriate Federal
12 banking agency, a State insurance regulator may
13 provide any examination or other reports, records, or
14 other information to which the State insurance regu-
15 lator may have access with respect to a company
16 that—

17 (A) is engaged in insurance activities and
18 is regulated by that insurance regulator; and

19 (B) is an affiliate of an insured depository
20 institution or a bank holding company.

21 (b) CONSULTATION.—Before making any determina-
22 tion relating to the initial affiliation of, or the continuing
23 affiliation of, an insured depository institution or bank
24 holding company with a company engaged in insurance ac-
25 tivities, the appropriate Federal banking agency shall con-

1 sult with the appropriate State insurance regulator of such
2 company and take the views of such insurance regulator
3 into account in making such determination.

4 (c) EFFECT ON OTHER AUTHORITY.—Nothing in
5 this section shall limit in any respect the authority of the
6 appropriate Federal banking agency with respect to an in-
7 sured depository institution or bank holding company or
8 any affiliate thereof under any provision of law.

9 (d) CONFIDENTIALITY AND PRIVILEGE.—

10 (1) CONFIDENTIALITY.—The appropriate Fed-
11 eral banking agency may not provide any informa-
12 tion or material that is entitled to confidential treat-
13 ment under applicable Federal banking agency regu-
14 lations, or other applicable law, to a State insurance
15 regulator, unless such regulator agrees to maintain
16 the information or material in confidence and to
17 take all reasonable steps to oppose any effort to se-
18 cure disclosure of the information or material by the
19 regulator. The appropriate Federal banking agency
20 shall treat as confidential any information or mate-
21 rial obtained from a State insurance regulator that
22 is entitled to confidential treatment under applicable
23 State regulations, or other applicable law, and take
24 all reasonable steps to oppose any effort to secure

1 disclosure of the information or material by the Fed-
 2 eral banking agency.

3 (2) PRIVILEGE.—The provision pursuant to this
 4 section of information or material by a Federal
 5 banking agency or a State insurance regulator shall
 6 not constitute a waiver of, or otherwise affect, any
 7 privilege to which the information or material is oth-
 8 erwise subject.

9 (e) DEFINITIONS.—For purposes of this section, the
 10 following definitions shall apply:

11 (1) APPROPRIATE FEDERAL BANKING AGENCY;
 12 INSURED DEPOSITORY INSTITUTION.—The terms
 13 “appropriate Federal banking agency” and “insured
 14 depository institution” have the same meanings as
 15 in section 3 of the Federal Deposit Insurance Act.

16 (2) BOARD; BANK HOLDING COMPANY.—The
 17 terms “Board” and “bank holding company” have
 18 the same meanings as in section 2 of the Bank
 19 Holding Company Act of 1956.

20 **SEC. 117. PRESERVING THE INTEGRITY OF FDIC RE-**
 21 **SOURCES.**

22 Section 11(a)(4)(B) of the Federal Deposit Insurance
 23 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
 24 benefit any shareholder of” and inserting “to benefit any
 25 shareholder, affiliate (other than an insured depository in-

stitution that receives assistance in accordance with the provisions of this Act), or subsidiary of”.

Subtitle C—Activities of National Banks

SEC. 121. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE MUNICIPAL REVENUE BONDS.

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following:

“The limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank’s own account do not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).”.

1 **SEC. 122. SUBSIDIARIES OF NATIONAL BANKS.**

2 (a) IN GENERAL.—Chapter one of title LXII of the
3 Revised Statutes of the United States (12 U.S.C. 21 et
4 seq.) is amended—

5 (1) by redesignating section 5136A as section
6 5136C; and

7 (2) by inserting after section 5136 (12 U.S.C.
8 24) the following new section:

9 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

10 **“(a) AUTHORIZATION TO CONDUCT IN OPERATING**
11 **SUBSIDIARIES CERTAIN ACTIVITIES THAT ARE FINAN-**
12 **CIAL IN NATURE.—**

13 **“(1) IN GENERAL.—**Subject to paragraph (2), a
14 national bank may control a financial subsidiary, or
15 hold an interest in a financial subsidiary, only if—

16 **“(A)** the consolidated total assets of the
17 national bank do not exceed \$1,000,000,000;

18 **“(B)** the national bank is not an affiliate
19 of a bank holding company;

20 **“(C)** the subject activities are not real es-
21 tate development or real estate investment ac-
22 tivities, unless otherwise expressly authorized by
23 law;

24 **“(D)** the national bank and each insured
25 depository institution affiliate of the national
26 bank is well capitalized and well managed; and

1 “(E) the national bank has received the
 2 approval of the Comptroller of the Currency to
 3 engage in such activities, which approval shall
 4 be based solely upon the factors set forth in
 5 subparagraph (D) and factors set forth in sub-
 6 section (c).

7 “(2) REGULATIONS REQUIRED.—The Comp-
 8 troller of the Currency shall, by regulation, prescribe
 9 procedures for the enforcement of this section.

10 “(b) SAFETY AND SOUNDNESS FIRE WALLS.—

11 “(1) CAPITAL REDUCTION REQUIRED.—In de-
 12 termining compliance with applicable capital stand-
 13 ards for purposes of subsection (a)(1)(D)—

14 “(A) the aggregate amount of outstanding
 15 equity investments by a national bank in a fi-
 16 nancial subsidiary shall be deducted from the
 17 assets and tangible equity of the national bank;
 18 and

19 “(B) the assets and liabilities of the finan-
 20 cial subsidiary shall not be consolidated with
 21 those of the national bank.

22 “(2) INVESTMENT LIMITATION.—A national
 23 bank may not, without the prior approval of the
 24 Comptroller of the Currency, make any equity in-
 25 vestment in a financial subsidiary of the bank if that

1 investment would, when made, exceed the amount
2 that the national bank could pay as a dividend with-
3 out obtaining prior regulatory approval.

4 “(c) SAFEGUARDS FOR THE BANK.—A national bank
5 that establishes or maintains a financial subsidiary shall
6 assure that—

7 “(1) the procedures of the national bank for
8 identifying and managing financial and operational
9 risks within the national bank and financial sub-
10 sidiary adequately protect the national bank from
11 such risks;

12 “(2) the bank has, for the protection of the na-
13 tional bank, reasonable policies and procedures to
14 preserve the separate corporate identity and limited
15 liability of the national bank and the financial sub-
16 sidiaries of the national bank; and

17 “(3) the national bank is in compliance with
18 this section.

19 “(d) STREAMLINING REGULATION AND SUPERVISION
20 AND ENCOURAGING CONSULTATION AMONG FEDERAL
21 AND STATE REGULATORS.—

22 “(1) IN GENERAL.—To the extent that a na-
23 tional bank engages in activities that are authorized
24 by subsection (a) through a functionally regulated fi-
25 nancial subsidiary, the regulation and supervision of

1 such subsidiary by the Comptroller of the Currency,
2 including its ability to require a contribution of cap-
3 ital or assets to the national bank from that func-
4 tionally regulated financial subsidiary, shall be lim-
5 ited, as set forth under section 115 of the Financial
6 Services Modernization Act of 1999.

7 “(2) INTERAGENCY CONSULTATION.—The pro-
8 visions of section 116 of the Financial Services Mod-
9 ernization Act of 1999, relating to interagency con-
10 sultation, shall apply to the Comptroller of the Cur-
11 rency and the appropriate State regulators of func-
12 tionally regulated financial subsidiaries of a national
13 bank.

14 “(e) PRESERVATION OF EXISTING OPERATING SUB-
15 SIDIARY AUTHORITY.—Notwithstanding any other provi-
16 sion of this section—

17 “(1) a national bank may retain control of a
18 company, or retain an interest in a company, and
19 conduct through such company any activities law-
20 fully conducted therein as of the date of enactment
21 of the Financial Services Modernization Act of 1999;
22 and

23 “(2) a national bank may own shares of or any
24 other interest in any company that is engaged only
25 in activities that are permissible for the national

1 bank to engage in directly, if such activities are en-
2 gaged in under the same terms and conditions that
3 would govern the conduct if conducted by a national
4 bank directly.

5 “(f) DEFINITIONS.—For purposes of this section, the
6 following definitions shall apply:

7 “(1) FINANCIAL SUBSIDIARY.—The term ‘fi-
8 nancial subsidiary’ means a company that—

9 “(A) is a subsidiary of a national bank;
10 and

11 “(B) is engaged as principal in any activity
12 that is permissible for a bank holding company
13 under section 4(k) of the Bank Holding Com-
14 pany Act of 1956 and is not permissible for na-
15 tional banks to engage in directly.

16 “(2) FUNCTIONALLY REGULATED.—The term
17 ‘functionally regulated financial subsidiary’ means a
18 financial subsidiary that is—

19 “(A) a broker or dealer that is registered
20 under the Securities Exchange Act of 1934;

21 “(B) an investment adviser that is reg-
22 istered under the Investment Advisers Act of
23 1940, or with any State, with respect to the in-
24 vestment advisory activities of such investment

1 adviser and activities incidental to such invest-
2 ment advisory activities;

3 “(C) an insurance company that is subject
4 to supervision by a State insurance commission,
5 agency, or similar authority; and

6 “(D) an entity that is subject to regulation
7 by the Commodity Futures Trading Commis-
8 sion, with respect to the commodities activities
9 of such entity and activities incidental to such
10 commodities activities.

11 “(3) SUBSIDIARY.—The term ‘subsidiary’ has
12 the same meaning as in section 2 of the Bank Hold-
13 ing Company Act of 1956.

14 “(4) WELL CAPITALIZED.—The term ‘well cap-
15 italized’ has the same meaning as in section 38 of
16 the Federal Deposit Insurance Act.

17 “(5) WELL MANAGED.—The term ‘well man-
18 aged’ means—

19 “(A) in the case of a depository institution
20 that has been examined, unless otherwise deter-
21 mined in writing by the appropriate Federal
22 banking agency—

23 “(i) the achievement of a composite
24 rating of 1 or 2 under the Uniform Finan-
25 cial Institutions Rating System (or an

1 equivalent rating under an equivalent rat-
 2 ing system) in connection with the most re-
 3 cent examination or subsequent review of
 4 the depository institution; and

5 “(ii) at least a rating of 2 for man-
 6 agement, if such rating is given; or

7 “(B) in the case of any depository institu-
 8 tion that has not been examined, the existence
 9 and use of managerial resources that the appro-
 10 priate Federal banking agency determines are
 11 satisfactory.

12 “(6) INCORPORATED DEFINITIONS.—The terms
 13 ‘appropriate Federal banking agency’, ‘depository in-
 14 stitution’, and ‘insured depository institution’, have
 15 the same meanings as in section 3 of the Federal
 16 Deposit Insurance Act.”.

17 (b) LIMITING THE CREDIT EXPOSURE OF A NA-
 18 TIONAL BANK TO A FINANCIAL SUBSIDIARY TO THE
 19 AMOUNT OF PERMISSIBLE CREDIT EXPOSURE TO AN AF-
 20 FILIATE.—Section 23A of the Federal Reserve Act (12
 21 U.S.C. 371c) is amended—

22 (1) by redesignating subsection (e) as sub-
 23 section (f); and

24 (2) by inserting after subsection (d), the fol-
 25 lowing new subsection:

1 “(e) RULES RELATING TO NATIONAL BANKS WITH
2 FINANCIAL SUBSIDIARIES.—

3 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
4 purposes of this section and section 23B, the term
5 ‘financial subsidiary’ has the same meaning as in
6 section 5136A(f) of the Revised Statutes of the
7 United States.

8 “(2) APPLICATION TO TRANSACTIONS BETWEEN
9 A FINANCIAL SUBSIDIARY OF A NATIONAL BANK AND
10 THE NATIONAL BANK.—For purposes of applying
11 this section and section 23B to a transaction be-
12 tween a financial subsidiary of a national bank and
13 the national bank (or between such financial sub-
14 sidiary and any other subsidiary of the national
15 bank that is not a financial subsidiary), and not-
16 withstanding subsection (b)(2) of this section or sec-
17 tion 23B(d)(1)—

18 “(A) the financial subsidiary of the na-
19 tional bank—

20 “(i) shall be deemed to be an affiliate
21 of the national bank and of any other sub-
22 sidiary of the bank that is not a financial
23 subsidiary; and

24 “(ii) shall not be deemed to be a sub-
25 sidiary of the national bank; and

1 “(B) a purchase of or investment in equity
2 securities issued by the financial subsidiary
3 shall not be deemed to be a covered transaction.

4 “(3) APPLICATION TO TRANSACTIONS BETWEEN
5 FINANCIAL SUBSIDIARY AND NONBANK AFFILI-
6 ATES.—

7 “(A) IN GENERAL.—A transaction between
8 a financial subsidiary and an affiliate of the fi-
9 nancial subsidiary (that is not a subsidiary of
10 a national bank) shall not be deemed to be a
11 transaction between a subsidiary of a national
12 bank and an affiliate of that bank for purposes
13 of section 23A or section 23B.

14 “(B) CERTAIN AFFILIATES EXCLUDED.—
15 For purposes of this paragraph, the term ‘affil-
16 iate’ does not include a national bank, or a sub-
17 sidiary of a national bank that is engaged ex-
18 clusively in activities permissible for a national
19 bank to engage in directly or agency activities
20 permitted under section 123 of the Financial
21 Services Modernization Act of 1999.”.

22 (c) ANTITYING.—Section 106(a) of the Bank Holding
23 Company Act Amendments of 1970 (12 U.S.C. 1971) is
24 amended by adding at the end the following: “For pur-
25 poses of this section, a financial subsidiary of a national

1 bank engaging in activities pursuant to section 5136A(a)
 2 of the Revised Statutes of the United States shall be
 3 deemed to be a subsidiary of a bank holding company, and
 4 not a subsidiary of a bank.”.

5 (d) CLERICAL AMENDMENT.—The table of sections
 6 for chapter one of title LXII of the Revised Statutes of
 7 the United States is amended—

8 (1) by redesignating the item relating to section
 9 5136A as relating to section 5136C; and

10 (2) by inserting after the item relating to sec-
 11 tion 5136 the following new item:

“5136A. Subsidiaries of national banks.”.

12 **SEC. 123. AGENCY ACTIVITIES.**

13 A national bank may control a company, or hold an
 14 interest in a company that engages in agency activities
 15 that have been determined by the Comptroller of the Cur-
 16 rency to be permissible for national banks or to be finan-
 17 cial in nature or incidental to such financial activities (as
 18 determined pursuant to section 4(k) of the Bank Holding
 19 Company Act of 1956) if the company engages in such
 20 activities solely as agent and not directly or indirectly as
 21 principal.

22 **SEC. 124. PROHIBITING FRAUDULENT REPRESENTATIONS.**

23 (a) IN GENERAL.—Chapter 47 of title 18, United
 24 States Code, is amended by inserting after section 1007
 25 the following new section:

1 **“SEC. 1008. MISREPRESENTATIONS REGARDING FINANCIAL**
2 **INSTITUTION LIABILITY FOR OBLIGATIONS**
3 **OF AFFILIATES.**

4 “(a) PROHIBITION.—It shall be unlawful for an insti-
5 tution-affiliated party of an insured depository institution
6 or institution-affiliated party of a subsidiary or affiliate
7 of an insured depository institution to fraudulently rep-
8 resent that the institution is or will be liable for any obli-
9 gation of a subsidiary or other affiliate of the institution.

10 “(b) PENALTIES.—Whoever violates subsection (a)
11 shall be fined under this title, imprisoned not more than
12 1 year, or both.

13 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
14 For purposes of this section, the term ‘institution-affili-
15 ated party’ has the same meaning as in section 3 of the
16 Federal Deposit Insurance Act, except that references to
17 an insured depository institution shall be deemed to in-
18 clude references to a subsidiary or affiliate of an insured
19 depository institution.

20 “(d) OTHER DEFINITIONS.—For purposes of this
21 section, the terms ‘affiliate’, ‘insured depository institu-
22 tion’, and ‘subsidiary’ have same meanings as in section
23 3 of the Federal Deposit Insurance Act.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 47 of title 18, United States Code, is amended

1 by inserting after the item relating to section 1007 the
 2 following new item:

“1008. Misrepresentations regarding financial institution liability for obligations
 of affiliates.”.

3 **SEC. 125. INSURANCE UNDERWRITING BY NATIONAL**
 4 **BANKS.**

5 (a) IN GENERAL.—

6 (1) IN GENERAL.—Except as provided in para-
 7 graph (2), a national bank and the subsidiaries of a
 8 national bank may only provide insurance in a State
 9 as principal in accordance with section 5136A(a) of
 10 the Revised Statutes of the United States, as added
 11 by this Act.

12 (2) EXCEPTION.—A national bank and the sub-
 13 sidiaries of a national bank may provide authorized
 14 insurance products as principal without regard to
 15 section 5136A(a) of the Revised Statutes of the
 16 United States, as added by this Act.

17 (b) AUTHORIZED INSURANCE PRODUCTS.—For pur-
 18 poses of this section, a product is an “authorized insur-
 19 ance product” if—

20 (1) as of January 1, 1999, the Comptroller of
 21 the Currency had determined in writing that na-
 22 tional banks may provide such product as principal,
 23 or national banks were in fact lawfully providing
 24 such product as principal;

1 (2) no court of relevant jurisdiction had, by
2 final judgment, overturned a determination of the
3 Comptroller of the Currency that national banks
4 may provide such product as principal; and

5 (3) the product is not an annuity contract, the
6 income of which is subject to tax treatment under
7 section 72 of the Internal Revenue Code of 1986.

8 (c) DEFINITION.—For purposes of this section, the
9 term “insurance” means—

10 (1) any product regulated as insurance as of
11 January 1, 1999, in accordance with the relevant
12 State insurance law, in the State in which the prod-
13 uct is provided;

14 (2) any product first offered after January 1,
15 1999, which—

16 (A) a State insurance regulator determines
17 shall be regulated as insurance in the State in
18 which the product is provided because the prod-
19 uct insures, guarantees, or indemnifies against
20 liability, loss of life, loss of health, or loss
21 through damage to or destruction of property,
22 including surety bonds, life insurance, health in-
23 surance, title insurance, and property and cas-
24 ualty insurance (such as private passenger or
25 commercial automobile, homeowners, mortgage,

1 commercial multiperil, general liability, profes-
2 sional liability, workers' compensation, fire and
3 allied lines, farm owners multiperil, aircraft, fi-
4 delity, surety, medical malpractice, ocean ma-
5 rine, inland marine, and boiler and machinery
6 insurance); and

7 (B) is not a product or service of a bank
8 that is—

9 (i) a deposit product;

10 (ii) a loan, discount, letter of credit,
11 or other extension of credit;

12 (iii) a trust or other fiduciary service;

13 (iv) a qualified financial contract (as
14 defined in or determined pursuant to sec-
15 tion 11(e)(8)(D)(i) of the Federal Deposit
16 Insurance Act); or

17 (v) a financial guaranty, except that
18 this subparagraph shall not apply to a
19 product that includes an insurance compo-
20 nent such that if the product is offered or
21 proposed to be offered by the bank as
22 principal—

23 (I) it would be treated as a life
24 insurance contract under section 7702

1 of the Internal Revenue Code of 1986;
2 or

3 (II) in the event that the product
4 is not a letter of credit or other simi-
5 lar extension of credit, a qualified fi-
6 nancial contract, or a financial guar-
7 anty, it would qualify for treatment
8 for losses incurred with respect to
9 such product under section 832(b)(5)
10 of the Internal Revenue Code of 1986,
11 if the bank were subject to tax as an
12 insurance company under section 831
13 of that Code; and

14 (3) any annuity contract, the income on which
15 is subject to tax treatment under section 72 of the
16 Internal Revenue Code of 1986.

17 **Subtitle D—National Treatment of**
18 **Foreign Financial Institutions**

19 **SEC. 151. NATIONAL TREATMENT OF FOREIGN FINANCIAL**
20 **INSTITUTIONS.**

21 Section 8(c) of the International Banking Act of
22 1978 (12 U.S.C. 3106(c)) is amended by adding at the
23 end the following new paragraph:

24 “(3) TERMINATION OF GRANDFATHERED RIGHTS.—

1 “(A) IN GENERAL.—If any foreign bank or for-
2 eign company files a declaration under section 4() of
3 the Bank Holding Company Act of 1956, any au-
4 thority conferred by this subsection on any foreign
5 bank or company to engage in any activity that the
6 Board has determined to be permissible for bank
7 holding companies under section 4(k) of that Act
8 shall terminate immediately.

9 “(B) RESTRICTIONS AND REQUIREMENTS AU-
10 THORIZED.—If a foreign bank or company that en-
11 gages, directly or through an affiliate pursuant to
12 paragraph (1), in an activity that the Board deter-
13 mines to be permissible for bank holding companies
14 under section 4(k) of the Bank Holding Company
15 Act of 1956, has not filed a declaration with the
16 Board of its status as a bank holding company
17 under section 4(l) of that Act by the end of the 2-
18 year period beginning on the date of enactment of
19 the Financial Services Modernization Act of 1999,
20 the Board, giving due regard to the principle of na-
21 tional treatment and equality of competitive oppor-
22 tunity, may impose such restrictions and require-
23 ments on the conduct of such activities by such for-
24 eign bank or company as are comparable to those
25 imposed on a bank holding company organized

1 under the laws of the United States, including a re-
 2 quirement to conduct such activities in compliance
 3 with any prudential safeguards established under
 4 section 10A of the Bank Holding Company Act of
 5 1956.”.

6 **SEC. 152. REPRESENTATIVE OFFICES.**

7 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
 8 Section 1(b)(15) of the International Banking Act of 1978
 9 (12 U.S.C. 3101(15)) is amended by striking “State agen-
 10 cy, or subsidiary of a foreign bank” and inserting “or
 11 State agency”.

12 (b) EXAMINATIONS.—Section 10(c) of the Inter-
 13 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
 14 amended by adding at the end the following: “The Board
 15 may also make examinations of any affiliate of a foreign
 16 bank conducting business in any State, if the Board deems
 17 it necessary to determine and enforce compliance with this
 18 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
 19 1841 et seq.), or other applicable Federal banking law.”.

20 **TITLE II—INSURANCE**
 21 **CUSTOMER PROTECTIONS**

22 **SEC. 201. FUNCTIONAL REGULATION OF INSURANCE.**

23 The insurance activity of any person or entity shall
 24 be functionally regulated by the States, subject to sub-
 25 sections (c), (d), and (e) of section 104.

1 **SEC. 202. INSURANCE CUSTOMER PROTECTIONS.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811
3 et seq.) is amended by adding at the end the following
4 new section:

5 **“SEC. 45. INSURANCE CUSTOMER PROTECTIONS.**

6 “(a) REGULATIONS REQUIRED.—

7 “(1) IN GENERAL.—The Federal banking agen-
8 cies shall prescribe and publish in final form, before
9 the end of the 1-year period beginning on the date
10 of enactment of the Financial Services Moderniza-
11 tion Act of 1999, customer protection regulations
12 (which the agencies jointly determine to be appro-
13 priate) that—

14 “(A) apply to retail sales practices, solici-
15 tations, advertising, or offers of any insurance
16 product by any insured depository institution or
17 any person that is engaged in such activities at
18 an office of the institution or on behalf of the
19 institution; and

20 “(B) are consistent with the requirements
21 of this Act and provide such additional protec-
22 tions for customers to whom such sales, solici-
23 tations, advertising, or offers are directed.

24 “(2) APPLICABILITY TO SUBSIDIARIES.—The
25 regulations prescribed pursuant to paragraph (1)
26 shall extend such protections to any subsidiaries of

1 an insured depository institution as deemed appro-
2 priate by the Federal banking agencies, where such
3 extension is determined to be necessary to ensure
4 the customer protections provided by this section.

5 “(3) CONSULTATION AND JOINT REGULA-
6 TIONS.—The Federal banking agencies shall consult
7 with each other and prescribe joint regulations pur-
8 suant to paragraph (1), after consultation with the
9 State insurance regulators, as appropriate.

10 “(b) SALES PRACTICES.—The regulations prescribed
11 pursuant to subsection (a) shall include antitying and
12 anticoercion rules applicable to the sale of insurance prod-
13 ucts that prohibit an insured depository institution from
14 engaging in any practice that would lead a customer to
15 believe an extension of credit, in violation of section 106(b)
16 of the Bank Holding Company Act Amendments of 1970,
17 is conditional upon—

18 “(1) the purchase of an insurance product from
19 the institution or any of its affiliates or subsidiaries;
20 or

21 “(2) an agreement by the customer not to ob-
22 tain, or a prohibition on the customer from obtain-
23 ing, an insurance product from an unaffiliated enti-
24 ty.

1 “(c) DISCLOSURES AND ADVERTISING.—The regula-
 2 tions prescribed pursuant to subsection (a) shall include
 3 the following provisions relating to disclosures and adver-
 4 tising in connection with the initial purchase of an insur-
 5 ance product:

6 “(1) DISCLOSURES.—

7 “(A) IN GENERAL.—Requirements that the
 8 following disclosures be made orally and in writ-
 9 ing before the completion of the initial sale and,
 10 in the case of clauses (iii) and (iv), at the time
 11 of application for an extension of credit:

12 “(i) UNINSURED STATUS.—As appro-
 13 priate, the product is not insured by the
 14 Federal Deposit Insurance Corporation,
 15 the United States Government, or the in-
 16 sured depository institution.

17 “(ii) INVESTMENT RISK.—In the case
 18 of a variable annuity or insurance product
 19 that involves an investment risk, that there
 20 is an investment risk associated with the
 21 product, including possible loss of value.

22 “(iii) ANTITYING; ANTICOERCION.—
 23 The approval of an extension of credit may
 24 not be conditioned on—

1 “(I) the purchase of an insurance
 2 product from the institution in which
 3 the application for credit is pending or
 4 any of its affiliates or subsidiaries; or

5 “(II) an agreement by the cus-
 6 tomer not to obtain, or a prohibition
 7 on the customer from obtaining, an
 8 insurance product from an unaffili-
 9 ated entity.

10 “(iv) PROHIBITION ON ENHANCED
 11 TREATMENT DUE TO OTHER PURCHASES
 12 OR SERVICES.—The processing of an ex-
 13 tension of credit or the delivery of any
 14 other financial product or service will not
 15 be expedited depending upon the purchase
 16 by the customer of any additional product
 17 or service from an affiliated person or enti-
 18 ty of the insured depository institution.

19 “(B) MAKING DISCLOSURE READILY UN-
 20 DERSTANDABLE.—Regulations prescribed under
 21 subparagraph (A) shall encourage the use of
 22 disclosure that is conspicuous, simple, direct,
 23 and readily understandable, such as the fol-
 24 lowing:

25 “(i) ‘NOT FDIC–INSURED’.

1 “(ii) ‘NOT GUARANTEED BY THE
2 BANK’.

3 “(iii) ‘MAY GO DOWN IN VALUE’.

4 “(C) LIMITATION.—Nothing in this para-
5 graph requires the inclusion of the foregoing
6 disclosures in advertisements of a general na-
7 ture describing or listing the services or prod-
8 ucts offered by an institution.

9 “(D) MEANINGFUL DISCLOSURES.—Disclo-
10 sures shall not be considered to be meaningfully
11 provided under this paragraph if the institution
12 or its representative states that disclosures re-
13 quired by this subsection were available to the
14 customer in printed material available for dis-
15 tribution, where such printed material is not
16 provided and such information is not orally dis-
17 closed to the customer.

18 “(E) ADJUSTMENTS FOR ALTERNATIVE
19 METHODS OF PURCHASE.—In prescribing the
20 requirements under subparagraphs (A) and (F),
21 necessary adjustments shall be made for pur-
22 chase in person, by telephone, or by electronic
23 media to provide for the most appropriate and
24 complete form of disclosure and acknowledg-
25 ments.

1 “(F) CUSTOMER ACKNOWLEDGMENT.—A
2 requirement that an insured depository institu-
3 tion shall require any person selling an insur-
4 ance product at any office of, or on behalf of,
5 the institution to obtain, at the time at which
6 a customer receives the disclosures required
7 under this paragraph or at the time of the ini-
8 tial purchase by the customer of such product,
9 an acknowledgment by such customer of the re-
10 ceipt of the disclosure required under this para-
11 graph with respect to such product.

12 “(2) PROHIBITION ON MISREPRESENTA-
13 TIONS.—A prohibition on any practice, or any adver-
14 tising, at any office of, or on behalf of, the insured
15 depository institution, or any subsidiary, as appro-
16 priate, that could mislead any person or otherwise
17 cause a reasonable person to reach an erroneous be-
18 lief with respect to—

19 “(A) the uninsured nature of any insur-
20 ance product sold, or offered for sale, by the in-
21 stitution or any subsidiary of the institution; or

22 “(B) in the case of a variable annuity or
23 insurance product that involves an investment
24 risk, the investment risk associated with any
25 such product.

1 “(d) SEPARATION OF BANKING AND NONBANKING
2 ACTIVITIES.—

3 “(1) REGULATIONS REQUIRED.—The regula-
4 tions prescribed pursuant to subsection (a) shall in-
5 clude such provisions as the Federal banking agen-
6 cies consider appropriate to ensure that the routine
7 acceptance of deposits is kept, to the extent prac-
8 ticable, physically segregated from insurance product
9 activity.

10 “(2) REQUIREMENTS.—Regulations prescribed
11 pursuant to paragraph (1) shall include the fol-
12 lowing requirements:

13 “(A) SEPARATE SETTING.—A clear delin-
14 eation of the setting in which, and the cir-
15 cumstances under which, transactions involving
16 insurance products should be conducted in a lo-
17 cation physically segregated from an area where
18 retail deposits are routinely accepted.

19 “(B) REFERRALS.—Standards that permit
20 any person accepting deposits from the public
21 in an area where such transactions are rou-
22 tinely conducted in an insured depository insti-
23 tution to refer a customer who seeks to pur-
24 chase any insurance product to a qualified per-
25 son who sells such product, only if the person

1 making the referral receives no more than a
2 one-time nominal fee of a fixed dollar amount
3 for each referral that does not depend on
4 whether the referral results in a transaction.

5 “(C) QUALIFICATION AND LICENSING RE-
6 QUIREMENTS.—Standards prohibiting any in-
7 sured depository institution from permitting
8 any person to sell or offer for sale any insur-
9 ance product in any part of any office of the in-
10 stitution, or on behalf of the institution, unless
11 such person is appropriately qualified and li-
12 censed.

13 “(e) EFFECT ON OTHER AUTHORITY.—

14 “(1) IN GENERAL.—No provision of this section
15 shall be construed as granting, limiting, or otherwise
16 affecting—

17 “(A) any authority of the Securities and
18 Exchange Commission, any self-regulatory or-
19 ganization, the Municipal Securities Rule-
20 making Board, or the Secretary of the Treasury
21 under any Federal securities law; or

22 “(B) except as provided in paragraph (2),
23 any authority of any State insurance commis-
24 sion (or any agency or office performing like
25 functions), or of any State securities commis-

1 sion (or any agency or office performing like
2 functions), or other State authority under any
3 State law.

4 “(2) COORDINATION WITH STATE LAW.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), insurance customer protec-
7 tion regulations prescribed by a Federal bank-
8 ing agency under this section shall not apply to
9 retail sales, solicitations, advertising, or offers
10 of any insurance product by any insured deposi-
11 tory institution or to any person who is engaged
12 in such activities at an office of such institution
13 or on behalf of the institution, in a State where
14 the State has in effect statutes, regulations, or-
15 ders, or interpretations, that are inconsistent
16 with or contrary to the regulations prescribed
17 by the Federal banking agencies.

18 “(B) PREEMPTION.—

19 “(i) IN GENERAL.—If, with respect to
20 any provision of the regulations prescribed
21 under this section, the Board of Governors
22 of the Federal Reserve System, the Comp-
23 troller of the Currency, and the Board of
24 Directors of the Corporation determine
25 jointly that the protection afforded by such

1 provision for customers is greater than the
2 protection provided by a comparable provi-
3 sion of the statutes, regulations, orders, or
4 interpretations referred to in subparagraph
5 (A) of any State, the appropriate State
6 regulatory authority shall be notified of
7 such determination in writing.

8 “(ii) CONSIDERATIONS.—Before mak-
9 ing a final determination under clause (i),
10 the Federal agencies referred to in clause
11 (i) shall give appropriate consideration to
12 comments submitted by the appropriate
13 State regulatory authorities relating to the
14 level of protection afforded to consumers
15 under State law.

16 “(iii) FEDERAL PREEMPTION AND
17 ABILITY OF STATES TO OVERRIDE FED-
18 ERAL PREEMPTION.—If the Federal agen-
19 cies referred to in clause (i) jointly deter-
20 mine that any provision of the regulations
21 prescribed under this section affords great-
22 er protections than a comparable State
23 law, rule, regulation, order, or interpreta-
24 tion, those agencies shall send a written
25 preemption notice to the appropriate State

1 regulatory authority to notify the State
2 that the Federal provision will preempt the
3 State provision and will become applicable
4 unless, not later than 3 years after the
5 date of such notice, the State adopts legis-
6 lation to override such preemption.

7 “(f) NON-DISCRIMINATION AGAINST NON-AFFILI-
8 ATED AGENTS.—The Federal banking agencies shall en-
9 sure that the regulations prescribed pursuant to sub-
10 section (a) shall not have the practical effect of discrimi-
11 nating, either intentionally or unintentionally, against any
12 person engaged in insurance sales or solicitations that is
13 not affiliated with an insured depository institution.”.

14 **SEC. 203. FEDERAL AND STATE DISPUTE RESOLUTION.**

15 (a) FILING IN COURT OF APPEALS.—In the case of
16 a regulatory conflict between a State insurance regulator
17 and a Federal regulator regarding insurance issues, in-
18 cluding whether a State law, rule, regulation, order, or in-
19 terpretation regarding any insurance sales or solicitation
20 activity is properly treated as preempted under Federal
21 law, either regulator may seek expedited judicial review
22 of such determination by the United States Court of Ap-
23 peals for the circuit in which the State is located or in
24 the United States Court of Appeals for the District of Co-
25 lumbia Circuit by filing a petition for review in such court.

1 (b) EXPEDITED REVIEW.—The United States Court
2 of Appeals in which a petition for review is filed in accord-
3 ance with subsection (a) shall complete all action on such
4 petition, including rendering a judgment, before the end
5 of the 60-day period beginning on the date on which such
6 petition is filed, unless all parties to such proceedings
7 agree to any extension of such period.

8 (c) SUPREME COURT REVIEW.—Any request for cer-
9 tiorari to the Supreme Court of the United States of any
10 judgment of a United States Court of Appeals with respect
11 to a petition for review under this section shall be filed
12 with the Supreme Court of the United States as soon as
13 practicable after such judgment is issued.

14 (d) STATUTE OF LIMITATION.—No action may be
15 filed under this section challenging an order, ruling, deter-
16 mination, or other action of a Federal regulator or State
17 insurance regulator after the later of—

18 (1) the end of the 12-month period beginning
19 on the date on which the first public notice is made
20 of such order, ruling, determination or other action
21 in its final form; or

22 (2) the end of the 6-month period beginning on
23 the date on which such order, ruling, determination,
24 or other action takes effect.

1 (e) STANDARD OF REVIEW.—The court shall decide
 2 an action filed under subsection (a) based on its review
 3 on the merits of all questions presented under State and
 4 Federal law, including the nature of the product or activ-
 5 ity and the history and purpose of its regulation under
 6 State and Federal law, according equal deference to the
 7 Federal regulator and the State insurance regulator.

8 **TITLE III—REGULATORY** 9 **IMPROVEMENTS**

10 **SEC. 301. ELIMINATION OF SAIF AND DIF SPECIAL RE-** 11 **SERVES.**

12 (a) SAIF SPECIAL RESERVE.—Section 11(a)(6) of
 13 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))
 14 is amended by striking subparagraph (L).

15 (b) DIF SPECIAL RESERVE.—Section 2704 of the
 16 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821
 17 note) is amended—

18 (1) by striking subsection (b); and

19 (2) in subsection (d)—

20 (A) by striking paragraph (4);

21 (B) in paragraph (6)(C)(i), by striking
 22 “(6) and (7)” and inserting “(5), (6), and (7)”;

23 and

24 (C) in paragraph (6)(C), by striking clause

25 (ii) and inserting the following:

1 “(ii) by redesignating paragraph (8)
2 as paragraph (5).”.

3 (c) EFFECTIVE DATE.—This section and the amend-
4 ments made by this section shall become effective on the
5 date of enactment of this Act.

6 **SEC. 302. EXPANDED SMALL BANK ACCESS TO S CORPORA-**
7 **TION TREATMENT.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall conduct a study of—

10 (1) possible revisions to the rules governing S
11 corporations, including—

12 (A) increasing the permissible number of
13 shareholders in such corporations;

14 (B) permitting shares of such corporations
15 to be held in individual retirement accounts;

16 (C) clarifying that interest on investments
17 held for safety, soundness, and liquidity pur-
18 poses should not be considered to be passive in-
19 come;

20 (D) discontinuation of the treatment of
21 stock held by bank directors as a disqualifying
22 personal class of stock for such corporations;
23 and

24 (E) improving Federal tax treatment of
25 bad debt and interest deductions; and

1 (2) what impact such revisions might have on
2 community banks.

3 (b) REPORT TO CONGRESS.—Not later than 6
4 months after the date of enactment of this Act, the Comp-
5 troller General of the United States shall submit a report
6 to the Congress on the results of the study conducted
7 under subsection (a).

8 (c) DEFINITION.—For purposes of this section, the
9 term “S corporation” has the same meaning as in section
10 1361(a)(1) of the Internal Revenue Code of 1986.

11 **SEC. 303. MEANINGFUL CRA EXAMINATIONS.**

12 (a) COMPLIANCE.—Notwithstanding any other provi-
13 sion of law, an insured depository institution rated as
14 “satisfactory” or better in its most recent examination
15 under the Community Reinvestment Act of 1977, and in
16 each such examination during the immediately preceding
17 36-month period shall be deemed to be in compliance with
18 the requirements of that Act until the completion of a sub-
19 sequent regularly scheduled examination under that Act,
20 unless substantial verifiable information arising since the
21 time of its most recent examination under that Act dem-
22 onstrating noncompliance is filed with the appropriate
23 Federal banking agency.

24 (b) OBJECTIONS.—

1 (1) AGENCY DETERMINATION.—The appro-
2 priate Federal banking agency shall determine, on a
3 timely basis, whether the information filed by any
4 person under subsection (a) provides sufficient proof
5 that the subject insured depository institution is no
6 longer in compliance with the requirements of the
7 Community Reinvestment Act of 1977, as provided
8 in subsection (a).

9 (2) BURDEN OF PROOF.—A person filing infor-
10 mation under subsection (a) shall bear the burden of
11 proving to the satisfaction of the appropriate Fed-
12 eral banking agency, the substantial verifiable na-
13 ture of that information.

14 (c) DEFINITIONS.—In this section, the terms “in-
15 sured depository institution” and “appropriate Federal
16 banking agency” have the same meanings as in section
17 3 of the Federal Deposit Insurance Act.

18 **SEC. 304. FINANCIAL INFORMATION PRIVACY PROTECTION.**

19 (a) FINANCIAL INFORMATION ANTI-FRAUD.—The
20 Consumer Credit Protection Act (15 U.S.C. 1601 et seq.)
21 is amended by adding at the end the following:

1 **“TITLE X—FINANCIAL INFORMA-**
 2 **TION PRIVACY PROTECTION**

3 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

4 “(a) SHORT TITLE.—This title may be cited as the
 5 ‘Financial Information Anti-Fraud Act of 1999’.

6 “(b) TABLE OF CONTENTS.—The table of contents
 7 for this title is as follows:

“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

“Sec. 1001. Short title; table of contents.

“Sec. 1002. Definitions.

“Sec. 1003. Privacy protection for customer information of financial institu-
 tions.

“Sec. 1004. Administrative enforcement.

“Sec. 1005. Civil liability.

“Sec. 1006. Criminal penalty.

“Sec. 1007. Relation to State laws.

“Sec. 1008. Agency guidance.

8 **“SEC. 1002. DEFINITIONS.**

9 “For purposes of this title, the following definitions
 10 shall apply:

11 “(1) CUSTOMER.—The term ‘customer’ means,
 12 with respect to a financial institution, any person (or
 13 authorized representative of a person) to whom the
 14 financial institution provides a product or service,
 15 including that of acting as a fiduciary.

16 “(2) CUSTOMER INFORMATION OF A FINANCIAL
 17 INSTITUTION.—The term ‘customer information of a
 18 financial institution’ means any information main-
 19 tained by a financial institution which is derived
 20 from the relationship between the financial institu-

1 tion and a customer of the financial institution and
2 is identified with the customer.

3 “(3) DOCUMENT.—The term ‘document’ means
4 any information in any form.

5 “(4) FINANCIAL INSTITUTION.—

6 “(A) IN GENERAL.—The term ‘financial
7 institution’ means any institution engaged in
8 the business of providing financial services to
9 customers who maintain a credit, deposit, trust,
10 or other financial account or relationship with
11 the institution.

12 “(B) CERTAIN FINANCIAL INSTITUTIONS
13 SPECIFICALLY INCLUDED.—The term ‘financial
14 institution’ includes any depository institution
15 (as defined in section 19(b)(1)(A) of the Fed-
16 eral Reserve Act), any loan or finance company,
17 any credit card issuer or operator of a credit
18 card system, and any consumer reporting agen-
19 cy that compiles and maintains files on con-
20 sumers on a nationwide basis (as defined in sec-
21 tion 603(p)).

22 “(C) FURTHER DEFINITION BY REGULA-
23 TION.—The Board of Governors of the Federal
24 Reserve System may prescribe regulations fur-
25 ther defining the term ‘financial institution’, in

1 accordance with subparagraph (A), for purposes
2 of this title.

3 **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**
4 **MATION OF FINANCIAL INSTITUTIONS.**

5 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
6 MATION BY FALSE PRETENSES.—It shall be a violation
7 of this title for any person to obtain or attempt to obtain,
8 or cause to be disclosed or attempt to cause to be disclosed
9 to any person, customer information of a financial institu-
10 tion relating to another person—

11 “(1) by knowingly making a false, fictitious, or
12 fraudulent statement or representation to an officer,
13 employee, or agent of a financial institution with the
14 intent to deceive the officer, employee, or agent into
15 relying on that statement or representation for pur-
16 poses of releasing the customer information;

17 “(2) by knowingly making a false, fictitious, or
18 fraudulent statement or representation to a cus-
19 tomer of a financial institution with the intent to de-
20 ceive the customer into relying on that statement or
21 representation for purposes of releasing the cus-
22 tomer information or authorizing the release of such
23 information; or

24 “(3) by knowingly providing any document to
25 an officer, employee, or agent of a financial institu-

1 tion, knowing that the document is forged, counter-
2 feit, lost, or stolen, was fraudulently obtained, or
3 contains a false, fictitious, or fraudulent statement
4 or representation, if the document is provided with
5 the intent to deceive the officer, employee, or agent
6 into relying on that document for purposes of releas-
7 ing the customer information.

8 “(b) PROHIBITION ON SOLICITATION OF A PERSON
9 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL
10 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
11 violation of this title to request a person to obtain cus-
12 tomer information of a financial institution, knowing or
13 consciously avoiding knowing that the person will obtain,
14 or attempt to obtain, the information from the institution
15 in any manner described in subsection (a).

16 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
17 AGENCIES.—No provision of this section shall be con-
18 strued so as to prevent any action by a law enforcement
19 agency, or any officer, employee, or agent of such agency,
20 to obtain customer information of a financial institution
21 in connection with the performance of the official duties
22 of the agency.

23 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
24 TIONS IN CERTAIN CASES.—No provision of this section
25 shall be construed to prevent any financial institution, or

1 any officer, employee, or agent of a financial institution,
2 from obtaining customer information of such financial in-
3 stitution in the course of—

4 “(1) testing the security procedures or systems
5 of such institution for maintaining the confiden-
6 tiality of customer information;

7 “(2) investigating allegations of misconduct or
8 negligence on the part of any officer, employee, or
9 agent of the financial institution; or

10 “(3) recovering customer information of the fi-
11 nancial institution which was obtained or received by
12 another person in any manner described in sub-
13 section (a) or (b).

14 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
15 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
16 TIONS.—No provision of this section shall be construed to
17 prevent any person from obtaining customer information
18 of a financial institution that otherwise is available as a
19 public record filed pursuant to the securities laws (as de-
20 fined in section 3(a)(47) of the Securities Exchange Act
21 of 1934).

22 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

23 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
24 SION.—Except as provided in subsection (b), compliance
25 with this title shall be enforced by the Federal Trade Com-

1 mission in the same manner and with the same power and
 2 authority as the Commission has under the Fair Debt Col-
 3 lection Practices Act to enforce compliance with that title.

4 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
 5 TAIN CASES.—

6 “(1) IN GENERAL.—Compliance with this title
 7 shall be enforced under—

8 “(A) section 8 of the Federal Deposit In-
 9 surance Act, in the case of—

10 “(i) national banks, and Federal
 11 branches and Federal agencies of foreign
 12 banks, by the Office of the Comptroller of
 13 the Currency;

14 “(ii) member banks of the Federal
 15 Reserve System (other than national
 16 banks), branches and agencies of foreign
 17 banks (other than Federal branches, Fed-
 18 eral agencies, and insured State branches
 19 of foreign banks), commercial lending com-
 20 panies owned or controlled by foreign
 21 banks, and organizations operating under
 22 section 25 or 25A of the Federal Reserve
 23 Act, by the Board;

24 “(iii) banks insured by the Federal
 25 Deposit Insurance Corporation (other than

1 members of the Federal Reserve System
2 and national nonmember banks) and in-
3 sured State branches of foreign banks, by
4 the Board of Directors of the Federal De-
5 posit Insurance Corporation; and

6 “(iv) savings associations the deposits
7 of which are insured by the Federal De-
8 posit Insurance Corporation, by the Direc-
9 tor of the Office of Thrift Supervision; and

10 “(B) the Federal Credit Union Act, by the
11 Administrator of the National Credit Union Ad-
12 ministration with respect to any Federal credit
13 union.

14 “(2) VIOLATIONS OF THIS TITLE TREATED AS
15 VIOLATIONS OF OTHER LAWS.—For the purpose of
16 the exercise by any agency referred to in paragraph
17 (1) of its powers under any Act referred to in that
18 paragraph, a violation of this title shall be deemed
19 to be a violation of a requirement imposed under
20 that Act. In addition to its powers under any provi-
21 sion of law specifically referred to in paragraph (1),
22 each of the agencies referred to in that paragraph
23 may exercise, for the purpose of enforcing compli-
24 ance with this title, any other authority conferred on
25 such agency by law.

1 “(c) STATE ACTION FOR VIOLATIONS.—

2 “(1) AUTHORITY OF STATES.—In addition to
3 such other remedies as are provided under State
4 law, if the chief law enforcement officer of a State,
5 or an official or agency designated by a State, has
6 reason to believe that any person has violated or is
7 violating this title, the State—

8 “(A) may bring an action to enjoin such
9 violation in any appropriate United States dis-
10 trict court or in any other court of competent
11 jurisdiction;

12 “(B) may bring an action on behalf of the
13 residents of the State to recover damages of not
14 more than \$1,000 for each violation; and

15 “(C) in the case of any successful action
16 under subparagraph (A) or (B), shall be award-
17 ed the costs of the action and reasonable attor-
18 ney fees as determined by the court.

19 “(2) RIGHTS OF FEDERAL REGULATORS.—

20 “(A) PRIOR NOTICE.—The State shall
21 serve prior written notice of any action under
22 paragraph (1) upon the Federal Trade Commis-
23 sion and, in the case of an action which involves
24 a financial institution described in section
25 1004(b)(1), the agency referred to in such sec-

tion with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

“(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

“(i) to intervene in an action under paragraph (1);

“(ii) upon so intervening, to be heard on all matters arising therein;

“(iii) to remove the action to the appropriate United States district court; and

“(iv) to file petitions for appeal.

“(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses

1 or the production of documentary and other evi-
 2 dence.

3 “(4) LIMITATION ON STATE ACTION WHILE
 4 FEDERAL ACTION PENDING.—If the Federal Trade
 5 Commission or any agency described in subsection
 6 (b) has instituted a civil action for a violation of this
 7 title, no State may, during the pendency of such ac-
 8 tion, bring an action under this section against any
 9 defendant named in the complaint of the Federal
 10 Trade Commission or such agency for any violation
 11 of this title that is alleged in that complaint.

12 **“SEC. 1005. CIVIL LIABILITY.**

13 “Any person, other than a financial institution, who
 14 fails to comply with any provision of this title with respect
 15 to any financial institution or any customer information
 16 of a financial institution shall be liable to such financial
 17 institution or the customer to whom such information re-
 18 lates in an amount equal to the sum of the amounts deter-
 19 mined under each of the following paragraphs:

20 “(1) ACTUAL DAMAGES.—The greater of—

21 “(A) the amount of any actual damage
 22 sustained by the financial institution or cus-
 23 tomer as a result of such failure; or

24 “(B) any amount received by the person
 25 who failed to comply with this title, including

1 an amount equal to the value of any nonmone-
2 tary consideration, as a result of the action
3 which constitutes such failure.

4 “(2) ADDITIONAL DAMAGES.—Such additional
5 amount as the court may allow.

6 “(3) ATTORNEYS’ FEES.—In the case of any
7 successful action to enforce any liability under para-
8 graph (1) or (2), the costs of the action, together
9 with reasonable attorneys’ fees.

10 **“SEC. 1006. CRIMINAL PENALTY.**

11 “(a) IN GENERAL.—Whoever violates, or attempts to
12 violate, section 1003 shall be fined in accordance with title
13 18, United States Code, or imprisoned for not more than
14 5 years, or both.

15 “(b) ENHANCED PENALTY FOR AGGRAVATED
16 CASES.—Whoever violates, or attempts to violate, section
17 1003 while violating another law of the United States or
18 as part of a pattern of any illegal activity involving more
19 than \$100,000 in a 12-month period shall be fined twice
20 the amount provided in subsection (b)(3) or (c)(3) (as the
21 case may be) of section 3571 of title 18, United States
22 Code, imprisoned for not more than 10 years, or both.

23 **“SEC. 1007. RELATION TO STATE LAWS.**

24 “(a) IN GENERAL.—This title shall not be construed
25 as superseding, altering, or affecting the statutes, regula-

1 tions, orders, or interpretations in effect in any State, ex-
2 cept to the extent that such statutes, regulations, orders,
3 or interpretations are inconsistent with the provisions of
4 this title, and then only to the extent of the inconsistency.

5 “(b) GREATER PROTECTION UNDER STATE LAW.—
6 For purposes of this section, a State statute, regulation,
7 order, or interpretation is not inconsistent with the provi-
8 sions of this title if the protection such statute, regulation,
9 order, or interpretation affords any person is greater than
10 the protection provided under this title.

11 **“SEC. 1008. AGENCY GUIDANCE.**

12 “In furtherance of the objectives of this title, each
13 Federal banking agency (as defined in section 3(z) of the
14 Federal Deposit Insurance Act) shall issue advisories to
15 depository institutions under the jurisdiction of the agen-
16 cy, in order to assist such depository institutions in deter-
17 ring and detecting activities proscribed under section
18 1003.”.

19 (b) REPORT TO CONGRESS ON FINANCIAL PRI-
20 VACY.—Not later than 18 months after the date of enact-
21 ment of this Act, the Comptroller General of the United
22 States, in consultation with the Federal Trade Commis-
23 sion, the Federal banking agencies, and other appropriate
24 Federal law enforcement agencies, shall submit to the
25 Congress a report on—

1 (1) the efficacy and adequacy of the remedies
2 provided in the amendments made by subsection (a)
3 in addressing attempts to obtain financial informa-
4 tion by fraudulent means or by false pretenses; and
5 (2) any recommendations for additional legisla-
6 tive or regulatory action to address threats to the
7 privacy of financial information created by attempts
8 to obtain information by fraudulent means or false
9 pretenses.

10 (c) REPORTS ON ONGOING FTC STUDY OF CON-
11 SUMER PRIVACY ISSUES.—With respect to the ongoing
12 multistage study being conducted by the Federal Trade
13 Commission on consumer privacy issues, the Commission
14 shall submit to the Congress an interim report on the find-
15 ings and conclusions of the Commission, together with
16 such recommendations for legislative and administrative
17 action as the Commission determines to be appropriate,
18 at the conclusion of each stage of such study and a final
19 report at the conclusion of the study.

20 (d) CONSUMER GRIEVANCE PROCESS.—The Federal
21 banking agencies (as that term is defined in section 3 of
22 the Federal Deposit Insurance Act) shall jointly establish
23 a consumer complaint mechanism, for receiving and expe-
24 ditiously addressing consumer complaints alleging a viola-
25 tion of regulations issued under section 45 of the Federal

1 Deposit Insurance Act (as added by section 202 of this
2 Act), which mechanism shall—

3 (1) establish a group within each Federal bank-
4 ing agency to receive such complaints; and

5 (2) develop procedures for—

6 (A) investigating such complaints;

7 (B) informing consumers of rights they
8 may have in connection with such complaints;
9 and

10 (C) addressing concerns raised by such
11 complaints, as appropriate, including proce-
12 dures for the recovery of losses, to the extent
13 appropriate.

14 **SEC. 305. CROSS MARKETING RESTRICTION; LIMITED PUR-**
15 **POSE BANK RELIEF; DIVESTITURE.**

16 (a) CROSS MARKETING RESTRICTION.—Section 4(f)
17 of the Bank Holding Company Act of 1956 (12 U.S.C.
18 1843(f)) is amended by striking paragraph (3).

19 (b) DAYLIGHT OVERDRAFTS.—Section 4(f) of the
20 Bank Holding Company Act of 1956 (12 U.S.C. 1843(f))
21 is amended by inserting after paragraph (2) the following
22 new paragraph:

23 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
24 For purposes of paragraph (2)(C), an overdraft is
25 described in this paragraph if—

1 “(A) such overdraft results from an inad-
2 vertent computer or accounting error that is be-
3 yond the control of both the bank and the affil-
4 iate;

5 “(B) such overdraft—

6 “(i) is permitted or incurred on behalf
7 of an affiliate that is monitored by, reports
8 to, and is recognized as a primary dealer
9 by the Federal Reserve Bank of New York;
10 and

11 “(ii) is fully secured, as required by
12 the Board, by bonds, notes, or other obli-
13 gations that are direct obligations of the
14 United States or on which the principal
15 and interest are fully guaranteed by the
16 United States or by securities and obliga-
17 tions eligible for settlement on the Federal
18 Reserve book entry system; or

19 “(C) such overdraft—

20 “(i) is permitted or incurred by, or on
21 behalf of, an affiliate that is engaged in ac-
22 tivities that are so closely related to bank-
23 ing, or managing or controlling banks, as
24 to be a proper incident thereto; and

1 “(ii) does not cause the bank to vio-
 2 late any provision of section 23A or 23B of
 3 the Federal Reserve Act, either directly, in
 4 the case of a bank that is a member of the
 5 Federal Reserve System, or by virtue of
 6 section 18(j) of the Federal Deposit Insur-
 7 ance Act, in the case of a bank that is not
 8 a member of the Federal Reserve Sys-
 9 tem.”.

10 (c) INDUSTRIAL LOAN COMPANIES; AFFILIATE
 11 OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding
 12 Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is
 13 amended by inserting before the period at the end “, or
 14 that is otherwise permissible for a bank controlled by a
 15 company described in section 4(f)(1)”.

16 (d) ACTIVITIES LIMITATIONS.—Section 4(f)(2) of the
 17 Bank Holding Company Act of 1956 (12 U.S.C.
 18 1843(f)(2)) is amended—

19 (1) by striking “Paragraph (1) shall cease to
 20 apply to any company described in such paragraph
 21 if—” and inserting “Subject to paragraph (3), a
 22 company described in paragraph (1) shall no longer
 23 qualify for the exemption provided under that para-
 24 graph if—”;

25 (2) in subparagraph (A)—

1 (A) in clause (ii)(IX), by striking “and” at
 2 the end;

3 (B) in clause (ii)(X), by inserting “and”
 4 after the semicolon;

5 (C) in clause (ii), by inserting after sub-
 6 clause (X) the following:

7 “(XI) assets that are derived
 8 from, or incidental to, activities in
 9 which institutions described in section
 10 2(c)(2)(F) or section 2(c)(2)(H) are
 11 permitted to engage;” and

12 (D) by striking “or” at the end; and

13 (3) by striking subparagraph (B) and inserting
 14 the following:

15 “(B) any bank subsidiary of such
 16 company—

17 “(i) accepts demand deposits or de-
 18 posits that the depositor may withdraw by
 19 check or similar means for payment to
 20 third parties; and

21 “(ii) engages in the business of mak-
 22 ing commercial loans (except that, for pur-
 23 poses of this clause, loans made in the or-
 24 dinary course of a credit card operation

1 shall not be treated as commercial loans);
2 or

3 “(C) after the date of enactment of the
4 Competitive Equality Amendments of 1987, any
5 bank subsidiary of such company permits any
6 overdraft (including any intraday overdraft), or
7 incurs any such overdraft in the account of the
8 bank at a Federal reserve bank, on behalf of an
9 affiliate, other than an overdraft described in
10 paragraph (3).”.

11 (e) DIVESTITURE REQUIREMENT.—Section 4(f)(4) of
12 the Bank Holding Company Act of 1956 (12 U.S.C.
13 1843(f)(4)) is amended to read as follows:

14 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
15 EMPTION.—If any company described in paragraph
16 (1) fails to qualify for the exemption provided under
17 paragraph (1) by operation of paragraph (2), such
18 exemption shall cease to apply to such company and
19 such company shall divest control of each bank it
20 controls before the end of the 180-day period begin-
21 ning on the date on which the company receives no-
22 tice from the Board that the company has failed to
23 continue to qualify for such exemption, unless, be-
24 fore the end of such 180-day period, the company
25 has—

1 “(A) either—

2 “(i) corrected the condition or ceased
3 the activity that caused the company to
4 fail to continue to qualify for the exemp-
5 tion; or

6 “(ii) submitted a plan to the Board
7 for approval to cease the activity or correct
8 the condition in a timely manner (which
9 shall not exceed 1 year); and

10 “(B) implemented procedures that are rea-
11 sonably adapted to avoid the reoccurrence of
12 such condition or activity.”.

13 **SEC. 306. “PLAIN LANGUAGE” REQUIREMENT FOR FEDERAL**
14 **BANKING AGENCY RULES.**

15 (a) IN GENERAL.—Each Federal banking agency
16 shall use plain language in all proposed and final
17 rulemakings published by the agency in the Federal Reg-
18 ister after January 1, 2000.

19 (b) REPORT.—Not later than March 1, 2001, each
20 Federal banking agency shall submit to the Congress a
21 report that describes how the agency has complied with
22 subsection (a).

23 (c) DEFINITIONS.—For purposes of this section, the
24 terms “Federal banking agency” and “State bank super-

1 visor” have the same meanings as in section 3 of the Fed-
 2 eral Deposit Insurance Act.

3 **SEC. 307. RETENTION OF “FEDERAL” IN NAME OF CON-**
 4 **VERTED FEDERAL SAVINGS ASSOCIATION.**

5 Section 2 of the Act entitled “An Act to enable na-
 6 tional banking associations to increase their capital stock
 7 and to change their names or locations”, approved May
 8 1, 1886 (12 U.S.C. 30), is amended by adding at the end
 9 the following new subsection:

10 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
 11 VERTED FEDERAL SAVINGS ASSOCIATION.—

12 “(1) IN GENERAL.—Notwithstanding subsection
 13 (a) or any other provision of law, any depository in-
 14 stitution, the charter of which is converted from that
 15 of a Federal savings association to a national bank
 16 or a State bank after the date of enactment of the
 17 Financial Services Modernization Act of 1999 may
 18 retain the term ‘Federal’ in the name of such insti-
 19 tution if such institution remains an insured deposi-
 20 tory institution.

21 “(2) DEFINITIONS.—For purposes of this sub-
 22 section, the terms ‘depository institution’, ‘insured
 23 depository institution’, ‘national bank’, and ‘State
 24 bank’ have the same meanings as in section 3 of the
 25 Federal Deposit Insurance Act.”.

1 **SEC. 308. COMMUNITY REINVESTMENT ACT EXEMPTION.**

2 (a) IN GENERAL.—No community financial institu-
3 tion shall be subject to the Community Reinvestment Act
4 of 1977 (12 U.S.C. 2901 et seq.).

5 (b) DEFINITION OF COMMUNITY FINANCIAL INSTI-
6 TUTION.—As used in this section, the term “community
7 financial institution” means an insured depository institu-
8 tion (as defined in section 3 of the Federal Deposit Insur-
9 ance Act), that has aggregate assets of not more than
10 \$100,000,000, and that is located in a non-metropolitan
11 area.

12 (c) ADJUSTMENTS.—The dollar amount referred to
13 in subsection (b) shall be adjusted annually after Decem-
14 ber 31, 1999, by the annual percentage increase in the
15 Consumer Price Index for Urban Wage Earners and Cler-
16 ical Workers published by the Bureau of Labor Statistics.

17 (d) DEFINITION.—For purposes of this section, the
18 term “non-metropolitan area” means any area, no part
19 of which is within an area designated as a metropolitan
20 statistical area by the Office of Management and Budget.

21 **SEC. 309. BANK OFFICERS AND DIRECTORS AS OFFICERS**
22 **AND DIRECTORS OF PUBLIC UTILITIES.**

23 Section 305(b) of the Federal Power Act (16 U.S.C.
24 825d(b)) is amended—

25 (1) by striking “(b) After six” and inserting the
26 following:

1 “(b) INTERLOCKING DIRECTORATES.—

2 “(1) IN GENERAL.—After 6”; and

3 (2) by adding at the end the following:

4 “(2) APPLICABILITY.—

5 “(A) IN GENERAL.—In the circumstances
6 described in subparagraph (B), paragraph (1)
7 shall not apply to a person that holds or pro-
8 poses to hold the positions of—

9 “(i) officer or director of a public util-
10 ity; and

11 “(ii) officer or director of a bank,
12 trust company, banking association, or
13 firm authorized by law to underwrite or
14 participate in the marketing of securities
15 of a public utility.

16 “(B) CIRCUMSTANCES.—The cir-
17 cumstances described in this subparagraph are
18 that—

19 “(i) a person described in subpara-
20 graph (A) does not participate in any de-
21 liberations or decisions of the public utility
22 regarding the selection of a bank, trust
23 company, banking association, or firm to
24 underwrite or participate in the marketing
25 of securities of the public utility, if the per-

son serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

“(ii) the bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

“(iii) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

“(iv) the issuance of securities the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.”.

SEC. 310. CONTROL OF BANKERS' BANKS.

Section 2(a)(5)(E)(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E)(i)) is amended by inserting “one or more” before “thrift institutions”.

1 **SEC. 311. MULTISTATE LICENSING AND INTERSTATE IN-**
2 **SURANCE SALES ACTIVITIES.**

3 (a) FINDINGS.—Congress finds that—

4 (1) the States regulate the business of insur-
5 ance, including the licensing of insurance agents and
6 brokers;

7 (2) the current State insurance licensing system
8 requires insurance agents and brokers to obtain li-
9 censes on a line-by-line, class-by-class, producer-by-
10 producer, State-by-State basis;

11 (3) in the commercial and industrial insurance
12 arena, this State-based system usually requires a
13 single agent or broker to hold scores of licenses if
14 that agent or broker intends to sell or broker insur-
15 ance on a nationwide basis;

16 (4) because of the duplicative licensing require-
17 ments both within States and from State to State,
18 a single insurance agent or broker must satisfy lit-
19 erally hundreds of administrative filing requirements
20 to become fully licensed to engage in the sale of a
21 full range of insurance products on a nationwide
22 basis;

23 (5) these administrative requirements appear to
24 be essentially unrelated to any requisite standards of
25 professionalism;

1 (6) many States impose certain requirements
2 on insurance agents and brokers that pose an undue,
3 discriminatory burden on nonresident agents, includ-
4 ing some States that ban solicitation of insurance
5 clients by nonresident agents and brokers;

6 (7) many States impose anticompetitive post-li-
7 censure requirements on nonresident agents and bro-
8 kers, including countersignature laws that require an
9 agent or broker servicing the needs of an out-of-
10 State client to have any insurance policy that is sold
11 “countersigned” by a resident agent;

12 (8) in some cases, such countersignature laws
13 also require a nonresident agent or broker to pay at
14 least half of any commission earned in a State in
15 which the agent or broker is not a resident to a resi-
16 dent agent or broker; and

17 (9) such duplicative and onerous filing require-
18 ments and anticompetitive burdens inhibit interstate
19 commerce, constitute unjustifiable trade barriers,
20 greatly undermine the competition that this Act
21 seeks to foster.

22 (b) SENSE OF CONGRESS.—It is the sense of the
23 Congress that—

1 (1) by the end of the 36-month period begin-
 2 ning on the date of enactment of this Act, the States
 3 should—

4 (A) implement uniform insurance agent
 5 and broker licensing application and qualifica-
 6 tion requirements that result in a fully recip-
 7 rocal licensing system; and

8 (B) eliminate any pre- or post-licensure re-
 9 quirements that have the practical effect of dis-
 10 criminating, directly or indirectly, against non-
 11 resident insurance agents or brokers;

12 (2) if such actions are not taken, Congress
 13 should take steps to directly rectify the problems
 14 identified in subsection (a); and

15 (3) any entity established by the Congress to so
 16 rectify the problems should be under the supervision
 17 and oversight of the National Association of Insur-
 18 ance Commissioners.

19 **SEC. 312. CRA SUNSHINE REQUIREMENTS.**

20 (a) DISCLOSURE AND REPORTING.—The Federal De-
 21 posit Insurance Act (12 U.S.C. 1811 et seq.), is amended
 22 by adding at the end thereof the following new section:

23 **“SEC. 46. CRA SUNSHINE REQUIREMENTS.**

24 “(a) PUBLIC DISCLOSURE OF AGREEMENTS.—Any
 25 agreement entered into by an insured depository institu-

1 tion or affiliate with a nongovernmental entity or person
2 made pursuant to or in connection with the Community
3 Reinvestment Act involving funds or other resources of
4 such insured depository institution or affiliate shall be in
5 its entirety fully disclosed, and the full text thereof made
6 available to the appropriate Federal banking agency with
7 supervisory responsibility over the insured depository in-
8 stitution and to the public and shall obligate each party
9 to comply with the provisions of this section.

10 “(b) ANNUAL REPORT OF ACTIVITY.—Each party to
11 the agreement shall report, as applicable, to the appro-
12 priate Federal banking agency with supervisory responsi-
13 bility over the insured depository institution, no less fre-
14 quently than once each year, such information as the Fed-
15 eral banking agency may by rule require relating to the
16 following actions taken by the party pursuant to an agree-
17 ment described in subsection (a) during the previous 12-
18 month period—

19 “(1) payments, fees or loans made to any party
20 to the agreement or received from any party to the
21 agreement and the terms and conditions of the
22 same; and

23 “(2) aggregate data on loans, investments and
24 services provided by each party in its community or
25 communities pursuant to the agreement; and

1 “(3) such other pertinent matters as deter-
 2 mined by rule by the appropriate Federal banking
 3 agency with supervisory responsibility over the in-
 4 sured depository institution.

5 The Federal banking agency shall ensure that the regula-
 6 tions implementing this section do not impose an undue
 7 burden on the parties and that proprietary and confiden-
 8 tial information is protected.

9 “(c) EXISTING AGREEMENTS.—The requirements of
 10 subsection (b) (1), (2), and (3) shall be deemed to be ful-
 11 filled with respect to any agreement made prior to May
 12 5, 1999.

13 “(d) SECONDARY AGREEMENTS.—Any agreement
 14 made on or after May 5, 1999 pursuant to an agreement
 15 described in subsection (a) also is subject to the require-
 16 ments of subsections (a) and (b).

17 “(e) DEFINITIONS.—

18 “(1) AGREEMENT.—As used in this section, the
 19 term ‘agreement’ refers to any written contract,
 20 written arrangement, or other written understanding
 21 with a value in excess of \$10,000 annually, or a
 22 group of substantively related contracts with an ag-
 23 gregate value of \$10,000 annually, made pursuant
 24 to or in connection with the Community Reinvest-
 25 ment Act of 1977, at least one party to which is an

1 insured depository institution or affiliate thereof, or
2 entity owned or controlled by an insured depository
3 institution or affiliate, whether organized on a profit
4 or not-for-profit basis. The term ‘agreement’ shall
5 not include any specific contract or commitment for
6 a loan or extension of credit to individuals, busi-
7 nesses, farms, or other entities, where the purpose of
8 the loan or extension of credit does not include any
9 re-lending of the borrowed funds to other parties.

10 “(2) APPROPRIATE FEDERAL BANKING AGENCY
11 AND INSURED DEPOSITORY INSTITUTION.—As used
12 in this section, the terms ‘appropriate Federal bank-
13 ing agency’ and ‘insured depository institution’ have
14 the same meanings as defined in section 3 of this
15 Act.

16 “(d) VIOLATIONS.—Any violation of the provisions of
17 this section shall be considered a violation of this Act. If
18 the party to the agreement that is not an insured deposi-
19 tory institution or affiliate fails to comply with this sec-
20 tion, the agreement shall not be enforceable after being
21 given notice and a reasonable period of time to perform
22 or comply.

23 “(e) LIMITATION.—Nothing in this section is in-
24 tended to provide any authority upon any appropriate
25 Federal banking agency to enforce the provisions of the

1 agreements that are subject to the requirements of sub-
 2 section (a).

3 “(f) REGULATIONS.—Each appropriate Federal
 4 banking agency shall prescribe regulations requiring pro-
 5 cedures reasonably designed to assure and monitor compli-
 6 ance with the requirements of this section.”.

7 **SEC. 313. INTERSTATE BRANCHES AND AGENCIES OF FOR-**
 8 **EIGN BANKS.**

9 Section 5 of the International Banking Act of 1978,
 10 as amended (12 U.S.C. 3103), is amended by striking sub-
 11 section (a)(7) and substituting the following:

12 **“(7) Additional authority for interstate branches and agencies**
 13 **of foreign banks; upgrades of certain foreign**
 14 **bank agencies and branches**

15 “Notwithstanding paragraphs (1) and (2), a foreign
 16 bank may—

17 “(A) with the approval of the Board and the
 18 Comptroller of the Currency, establish and operate
 19 a Federal branch or Federal agency or, with the ap-
 20 proval of the Board and the appropriate State bank
 21 supervisor, a State branch or State agency in any
 22 State outside the foreign bank’s home State if—

23 “(i) the establishment and operation of
 24 such branch or agency is permitted by the State

1 in which the branch or agency is to be estab-
2 lished; and

3 “(ii) in the case of a Federal or State
4 branch, the branch receives only such deposits
5 as would be permitted for a corporation orga-
6 nized under section 25A of the Federal Reserve
7 Act (12 U.S.C. 611 et seq.); or

8 “(B) with the approval of the Board and the
9 relevant licensing authority (the Comptroller in the
10 case of a Federal branch or the appropriate State
11 supervisor in the case of a State branch), upgrade
12 an agency, or a branch of the type referred to in
13 subsection (a)(7)(A)(ii), located in a State outside
14 the foreign bank’s home State, into a Federal or
15 State branch if the establishment and operation of
16 such branch is permitted by such State and—

17 “(i) such agency or branch was in oper-
18 ation in such State on the day before Sep-
19 tember 29, 1994, or

20 “(ii) such agency or branch has been in op-
21 eration in such State for a period of time that
22 meets the State’s minimum age requirement
23 permitted under section 1831u(a)(5) of title 12,
24 United States Code.”.

1 **SEC. 314. DISCLOSURES TO CONSUMERS UNDER THE**
2 **TRUTH IN LENDING ACT.**

3 (a) DISCLOSURE OF LATE PAYMENT DEADLINES
4 AND PENALTIES.—Section 127(b) of the Truth in Lend-
5 ing Act (15 U.S.C. 1637(b)) is amended by adding at the
6 end the following:

7 “(12) If a charge is to be imposed due to the
8 failure of the obligor to make payment on or before
9 a required payment due date, the date that payment
10 is due or, if different, the date on which a late pay-
11 ment fee will be charged, shall be stated prominently
12 in a conspicuous location on the billing statement,
13 together with the amount of the charge to be im-
14 posed if payment is made after such date.”.

15 (b) DISCLOSURES RELATED TO “TEASER RATES”.—
16 Section 127(c) (15 U.S.C. 1637(c)) is amended by insert-
17 ing after paragraph (5) (as so redesignated by section 4
18 of this Act) the following:

19 “(6) ADDITIONAL NOTICE CONCERNING ‘TEAS-
20 ER RATES’.—

21 “(A) IN GENERAL.—An application or so-
22 licitation for a credit card for which a disclo-
23 sure is required under this subsection shall con-
24 tain the disclosure contained in subparagraph
25 (B) or (C), as appropriate, if the application or
26 solicitation offers, for an introductory period of

1 less than 1 year, an annual percentage rate of
 2 interest that—

3 “(i) is less than the annual percentage
 4 rate of interest that will apply after the
 5 end of the introductory period; or

6 “(ii) in the case of an annual percent-
 7 age rate that varies in accordance with an
 8 index, is less than the current annual per-
 9 centage rate under the index that will
 10 apply after the end of such period.

11 “(B) FIXED ANNUAL PERCENTAGE
 12 RATE.—If the annual percentage rate that will
 13 apply after the end of the introductory period
 14 will be a fixed rate, the application or solicita-
 15 tion shall include the following disclosure: ‘The
 16 annual percentage rate of interest applicable
 17 during the introductory period is not the annual
 18 percentage rate that will apply after the end of
 19 the introductory period. The permanent annual
 20 percentage rate will apply after [insert applica-
 21 ble date] and will be [insert applicable percent-
 22 age rate].’.

23 “(C) VARIABLE ANNUAL PERCENTAGE
 24 RATE.—If the annual percentage rate that will
 25 apply after the end of the introductory period

1 will vary in accordance with an index, the appli-
2 cation or solicitation shall include the following
3 disclosure: ‘The annual percentage rate of inter-
4 est applicable during the introductory period is
5 not the annual percentage rate that will apply
6 after the end of the introductory period. The
7 permanent annual percentage rate will be deter-
8 mined by an index, and will apply after [insert
9 applicable date]. If the index that will apply
10 after such date were applied to your account
11 today, the annual percentage rate would be [in-
12 sert applicable percentage rate].’.

13 “(D) CONDITIONS FOR INTRODUCTORY
14 RATES.—If the annual percentage rate of inter-
15 est that will apply during the introductory pe-
16 riod described in subparagraph (A) is revocable
17 or otherwise conditioned upon any action by the
18 obligor, including any failure by the obligor to
19 pay the minimum payment amount or finance
20 charge or to make any payment by the stated
21 monthly payment due date, the application or
22 solicitation shall include disclosure of—

23 “(i) the conditions that the obligor
24 must meet to retain the annual percentage

1 rate of interest during the introductory pe-
 2 riod; and

3 “(ii) the annual percentage rate of in-
 4 terest that will apply as a result of the fail-
 5 ure of the obligor to meet such conditions.

6 “(E) FORM OF DISCLOSURE.—The disclo-
 7 sures required under this paragraph shall be
 8 made in a clear and conspicuous manner, in a
 9 prominent fashion.”.

10 **SEC. 315. APPROVAL FOR PURCHASES OF SECURITIES.**

11 Section 23B(b)(2) of the Federal Reserve Act (12
 12 U.S.C. 371c–1) is amended to read as follows:

13 “Subparagraph (B) of paragraph (1) shall not apply
 14 if the purchase or acquisition of such securities has been
 15 approved, before such securities are initially offered for
 16 sale to the public, by a majority of the directors of the
 17 bank based on a determination that the purchase is a
 18 sound investment for the bank irrespective of the fact that
 19 an affiliate of the bank is a principal underwriter of the
 20 securities.”.

21 **SEC. 316. PROVISION OF TECHNICAL ASSISTANCE TO**
 22 **MICROENTERPRISES.**

23 (a) IN GENERAL.—Title I of the Riegle Community
 24 Development and Regulatory Improvement Act of 1994

1 (12 U.S.C. 4701 et seq.) is amended by adding at the end
2 the following:

3 **“Subtitle C—Microenterprise Tech-**
4 **nical Assistance and Capacity**
5 **Building Program**

6 **“SEC. 171. SHORT TITLE.**

7 “This subtitle may be cited as the ‘Program for In-
8 vestment in Microentrepreneurs Act of 1999’, also re-
9 ferred to as the ‘PRIME Act’.

10 **“SEC. 172. DEFINITIONS.**

11 “For purposes of this subtitle—

12 “(1) the term ‘Administrator’ has the same
13 meaning as in section 103;

14 “(2) the term ‘capacity building services’ means
15 services provided to an organization that is, or is in
16 the process of becoming a microenterprise develop-
17 ment organization or program, for the purpose of
18 enhancing its ability to provide training and services
19 to disadvantaged entrepreneurs;

20 “(3) the term ‘collaborative’ means 2 or more
21 nonprofit entities that agree to act jointly as a quali-
22 fied organization under this subtitle;

23 “(4) the term ‘disadvantaged entrepreneur’
24 means a microentrepreneur that is—

25 “(A) a low-income person;

1 “(B) a very low-income person; or

2 “(C) an entrepreneur that lacks adequate
3 access to capital or other resources essential for
4 business success, or is economically disadvan-
5 taged, as determined by the Administrator;

6 “(5) the term ‘Fund’ has the same meaning as
7 in section 103;

8 “(6) the term ‘Indian tribe’ has the same mean-
9 ing as in section 103;

10 “(7) the term ‘intermediary’ means a private,
11 nonprofit entity that seeks to serve microenterprise
12 development organizations and programs as author-
13 ized under section 175;

14 “(8) the term ‘low-income person’ has the same
15 meaning as in section 103;

16 “(9) the term ‘microentrepreneur’ means the
17 owner or developer of a microenterprise;

18 “(10) the term ‘microenterprise’ means a sole
19 proprietorship, partnership, or corporation that—

20 “(A) has fewer than 5 employees; and

21 “(B) generally lacks access to conventional
22 loans, equity, or other banking services;

23 “(11) the term ‘microenterprise development or-
24 ganization or program’ means a nonprofit entity, or
25 a program administered by such an entity, including

1 community development corporations or other non-
 2 profit development organizations and social service
 3 organizations, that provides services to disadvan-
 4 tagged entrepreneurs or prospective entrepreneurs;

5 “(12) the term ‘training and technical assist-
 6 ance’ means services and support provided to dis-
 7 advantaged entrepreneurs or prospective entre-
 8 preneurs, such as assistance for the purpose of en-
 9 hancing business planning, marketing, management,
 10 financial management skills, and assistance for the
 11 purpose of accessing financial services; and

12 “(13) the term ‘very low-income person’ means
 13 having an income, adjusted for family size, of not
 14 more than 150 percent of the poverty line (as de-
 15 fined in section 673(2) of the Community Services
 16 Block Grant Act (42 U.S.C. 9902(2)), including any
 17 revision required by that section).

18 **“SEC. 173. ESTABLISHMENT OF PROGRAM.**

19 “The Administrator shall establish a microenterprise
 20 technical assistance and capacity building grant program
 21 to provide assistance from the Fund in the form of grants
 22 to qualified organizations in accordance with this subtitle.

23 **“SEC. 174. USES OF ASSISTANCE.**

24 “A qualified organization shall use grants made
 25 under this subtitle—

1 “(1) to provide training and technical assist-
2 ance to disadvantaged entrepreneurs;

3 “(2) to provide training and capacity building
4 services to microenterprise development organiza-
5 tions and programs and groups of such organiza-
6 tions to assist such organizations and programs in
7 developing microenterprise training and services;

8 “(3) to aid in researching and developing the
9 best practices in the field of microenterprise and
10 technical assistance programs for disadvantaged en-
11 trepreneurs; and

12 “(4) for such other activities as the Adminis-
13 trator determines are consistent with the purposes of
14 this subtitle.

15 **“SEC. 175. QUALIFIED ORGANIZATIONS.**

16 “For purposes of eligibility for assistance under this
17 subtitle, a qualified organization shall be—

18 “(1) a nonprofit microenterprise development
19 organization or program (or a group or collaborative
20 thereof) that has a demonstrated record of delivering
21 microenterprise services to disadvantaged entre-
22 preneurs;

23 “(2) an intermediary;

24 “(3) a microenterprise development organiza-
25 tion or program that is accountable to a local com-

1 munity, working in conjunction with a State or local
 2 government or Indian tribe; or

3 “(4) an Indian tribe acting on its own, if the
 4 Indian tribe can certify that no private organization
 5 or program referred to in this paragraph exists with-
 6 in its jurisdiction.

7 **“SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.**

8 “(a) ALLOCATION OF ASSISTANCE.—

9 “(1) IN GENERAL.—The Administrator shall al-
 10 locate assistance from the Fund under this subtitle
 11 to ensure that—

12 “(A) activities described in section 174(1)
 13 are funded using not less than 75 percent of
 14 amounts made available for such assistance;
 15 and

16 “(B) activities described in section 174(2)
 17 are funded using not less than 15 percent of
 18 amounts made available for such assistance.

19 “(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No
 20 single organization or entity may receive more than
 21 10 percent of the total funds appropriated under
 22 this subtitle in a single fiscal year.

23 “(b) TARGETED ASSISTANCE.—The Administrator
 24 shall ensure that not less than 50 percent of the grants
 25 made under this subtitle are used to benefit very low-in-

1 come persons, including those residing on Indian reserva-
2 tions.

3 “(c) SUBGRANTS AUTHORIZED.—

4 “(1) IN GENERAL.—A qualified organization re-
5 ceiving assistance under this subtitle may provide
6 grants using that assistance to qualified small and
7 emerging microenterprise organizations and pro-
8 grams, subject to such rules and regulations as the
9 Administrator determines to be appropriate.

10 “(2) LIMIT ON ADMINISTRATIVE EXPENSES.—

11 Not more than 7.5 percent of assistance received by
12 a qualified organization under this subtitle may be
13 used for administrative expenses in connection with
14 the making of subgrants under paragraph (1).

15 “(d) DIVERSITY.—In making grants under this sub-
16 title, the Administrator shall ensure that grant recipients
17 include both large and small microenterprise organiza-
18 tions, serving urban, rural, and Indian tribal communities
19 and racially and ethnically diverse populations.

20 **“SEC. 177. MATCHING REQUIREMENTS.**

21 “(a) IN GENERAL.—Financial assistance under this
22 subtitle shall be matched with funds from sources other
23 than the Federal Government on the basis of not less than
24 50 percent of each dollar provided by the Fund.

1 “(b) SOURCES OF MATCHING FUNDS.—Fees, grants,
2 gifts, funds from loan sources, and in-kind resources of
3 a grant recipient from public or private sources may be
4 used to comply with the matching requirement in sub-
5 section (a).

6 “(c) EXCEPTION.—

7 “(1) IN GENERAL.—In the case of an applicant
8 for assistance under this subtitle with severe con-
9 straints on available sources of matching funds, the
10 Administrator may reduce or eliminate the matching
11 requirements of subsection (a).

12 “(2) LIMITATION.—Not more than 10 percent
13 of the total funds made available from the Fund in
14 any fiscal year to carry out this subtitle may be ex-
15 cepted from the matching requirements of subsection
16 (a), as authorized by paragraph (1) of this sub-
17 section.

18 **“SEC. 178. APPLICATIONS FOR ASSISTANCE.**

19 “An application for assistance under this subtitle
20 shall be submitted in such form and in accordance with
21 such procedures as the Fund shall establish.

22 **“SEC. 179. RECORDKEEPING.**

23 “The requirements of section 115 shall apply to a
24 qualified organization receiving assistance from the Fund
25 under this subtitle as if it were a community development

1 financial institution receiving assistance from the Fund
2 under subtitle A.

3 **“SEC. 180. AUTHORIZATION.**

4 “In addition to funds otherwise authorized to be ap-
5 propriated to the Fund to carry out this title, there are
6 authorized to be appropriated to the Fund to carry out
7 this subtitle—

8 “(1) \$15,000,000 for fiscal year 2000;

9 “(2) \$15,000,000 for fiscal year 2001;

10 “(3) \$15,000,000 for fiscal year 2002; and

11 “(4) \$15,000,000 for fiscal year 2003.

12 **“SEC. 181. IMPLEMENTATION.**

13 “The Administrator shall, by regulation, establish
14 such requirements as may be necessary to carry out this
15 subtitle.”.

16 (b) ADMINISTRATIVE EXPENSES.—Section
17 121(a)(2)(A) of the Riegle Community Development and
18 Regulatory Improvement Act of 1994 (12 U.S.C.
19 4718(a)(2)(A)) is amended—

20 (1) by striking “\$5,550,000” and inserting
21 “\$6,100,000”; and

22 (2) in the first sentence, by inserting before the
23 period “, including costs and expenses associated
24 with carrying out subtitle C”.

1 (c) CONFORMING AMENDMENTS.—Section 104(d) of
 2 the Riegle Community Development and Regulatory Im-
 3 provement Act of 1994 (12 U.S.C. 4703(d)) is amended—

4 (1) in paragraph (2)—

5 (A) by striking “15” and inserting “17”;

6 (B) in subparagraph (G)—

7 (i) by striking “9” and inserting
 8 “11”;

9 (ii) by redesignating clauses (iv) and
 10 (v) as clauses (v) and (vi), respectively;
 11 and

12 (iii) by inserting after clause (iii) the
 13 following:

14 “(iv) 2 individuals who have expertise
 15 in microenterprises and microenterprise de-
 16 velopment;” and

17 (2) in paragraph (4), in the first sentence, by
 18 inserting before the period “and subtitle C”.

19 **SEC. 317. FEDERAL RESERVE AUDITS.**

20 (a) IN GENERAL.—The Federal Reserve Act (12
 21 U.S.C. 221 et seq.) is amended by inserting after section
 22 11A the following:

1 **“SEC. 11B. ANNUAL INDEPENDENT AUDITS OF FEDERAL**
2 **RESERVE BANKS.**

3 “(a) **AUDIT REQUIRED.**—Each Federal reserve bank
4 shall annually obtain an audit of the financial statements
5 of each Federal reserve bank (which shall have been pre-
6 pared in accordance with generally accepted accounting
7 principles) using generally accepted auditing standards
8 from an independent auditor that meets the requirements
9 of subsection (b).

10 “(b) **AUDITOR’S QUALIFICATIONS.**—The independent
11 auditor referred to in subsection (a) shall—

12 “(1) be a certified public accountant who is
13 independent of the Federal Reserve System; and

14 “(2) meet any other qualifications that the
15 Board may establish.

16 “(c) **CERTIFICATION REQUIRED.**—In each audit re-
17 quired under subsection (a), the auditor shall certify to
18 the Federal reserve bank and to the Board that the
19 auditor—

20 “(1) is a certified public accountant and is
21 independent of the Federal Reserve System; and

22 “(2) conducted the audit using generally accept-
23 ed auditing standards.

24 “(d) **CERTIFICATION BY FEDERAL RESERVE**
25 **BANK.**—Not later than 30 days after the completion of
26 each audit required under subsection (a), the Federal re-

1 serve bank shall provide to the Comptroller General of the
 2 United States—

3 “(1) a certification that—

4 “(A) the Federal reserve bank has ob-
 5 tained the audit required under subsection (a);

6 “(B) the Federal reserve bank has received
 7 the certifications of the auditor required under
 8 subsection (c); and

9 “(C) the audit fully complies with sub-
 10 section (a).

11 “(e) DETECTION OF ILLEGAL ACTS.—

12 “(1) AUDIT PROCEDURES.—Each audit re-
 13 quired by this section shall include procedures de-
 14 signed to provide reasonable assurance of detecting
 15 illegal acts that would have a direct and material ef-
 16 fect on the determination of financial statement
 17 amounts.

18 “(2) REPORTING POSSIBLE ILLEGALITIES.—If,
 19 in the course of conducting an audit required by this
 20 section, the independent auditor detects or otherwise
 21 becomes aware of information indicating that an ille-
 22 gal act (whether or not perceived to have an effect
 23 on the financial statements of the Federal reserve
 24 bank) has or may have occurred, the auditor—

1 “(A) shall determine whether it is likely
2 that the illegal act has occurred; and

3 “(B) shall, if the auditor determines that
4 the illegal act is likely to have occurred—

5 “(i) determine and consider the pos-
6 sible effect of the illegal act on the finan-
7 cial statements of the Federal reserve
8 bank; and

9 “(ii) as soon as practicable, inform
10 the Board that the illegal act is likely to
11 have occurred.

12 “(3) REPORT TO CONGRESS.—The independent
13 auditor under this section shall, as soon as prac-
14 ticable, directly report its conclusions to the Com-
15 mittee on Governmental Affairs of the Senate and
16 the Committee on Government Reform of the House
17 of Representatives with regard to any possible illegal
18 act that has been detected or has otherwise come to
19 the attention of the auditor during the course of the
20 audit required by this section, if, after determining
21 that the Board is adequately informed with respect
22 to such possible illegal act, the auditor concludes
23 that—

1 “(A) the possible illegal act has a direct
2 and material effect on the financial statements
3 of the Federal reserve bank;

4 “(B) the Board has not taken timely and
5 appropriate remedial actions with respect to the
6 possible illegal act; and

7 “(C) the failure to take remedial action is
8 reasonably expected to warrant departure from
9 a standard report of the auditor when made, or
10 warrant resignation from the audit engagement.

11 “(4) RESIGNATION OF AUDITOR.—If an inde-
12 pendent auditor resigns from its engagement to
13 audit a Federal reserve bank under paragraph (3),
14 the auditor shall furnish to the Committee on Gov-
15 ernmental Affairs of the Senate and the Committee
16 on Government Reform of the House of Representa-
17 tives, not later than 1 business day after such res-
18 ignation, a copy of the report of the auditor (or doc-
19 umentation of any oral report given).

20 “(f) RECORDKEEPING.—To facilitate compliance with
21 this section, each Federal reserve bank shall—

22 “(1) ensure that the books, records, and ac-
23 counts of the Federal reserve bank are maintained
24 and kept in sufficient detail to accurately and fairly

1 reflect the transactions and dispositions of the assets
2 of the bank;

3 “(2) devise and maintain a system of internal
4 controls sufficient to provide reasonable assurance
5 that transactions are recorded as necessary to per-
6 mit preparation of financial statements in con-
7 formity with generally accepted accounting principles
8 and to maintain accountability for assets;

9 “(3) ensure that access to assets of the Federal
10 reserve bank is permitted only in accordance with
11 the general or specific authorization of the Board;
12 and

13 “(4) ensure that—

14 “(A) the recorded accountability for assets
15 is compared with the existing assets at reason-
16 able intervals; and

17 “(B) appropriate action is taken with re-
18 spect to any differences.

19 “(g) REPORTS TO BOARD, CONGRESS.—Not later
20 than April 30 of each year, each Federal reserve bank
21 shall submit a copy of each audit conducted under this
22 section to the Board, and to the Committee on Govern-
23 mental Affairs of the Senate and the Committee on Gov-
24 ernment Reform of the House of Representatives.

1 **“SEC. 11C. INDEPENDENT AUDITS OF FEDERAL RESERVE**
2 **SYSTEM AND FEDERAL RESERVE BOARD.**

3 “(a) AUDIT OF RESERVE SYSTEM.—The Board shall
4 annually obtain an audit of the consolidated financial
5 statements of the Federal Reserve System (which shall
6 have been prepared in accordance with generally accepted
7 accounting principles) from an independent auditor, using
8 generally accepted auditing standards, based on reports
9 of audits of Federal reserve banks submitted to the Board
10 under section 11B(g) and the audit of the Board under
11 subsection (b) of this section.

12 “(b) AUDIT OF BOARD.—

13 “(1) IN GENERAL.—The Board shall annually
14 obtain an audit of the financial statements of the
15 Board (which shall have been prepared in accord-
16 ance with generally accepted accounting principles)
17 from an independent auditor, using generally accept-
18 ed auditing standards.

19 “(2) PRICED SERVICES AUDIT.—

20 “(A) IN GENERAL.—As part of each audit
21 of the Board required by this subsection, the
22 auditor shall—

23 “(i) audit the calculation of the pri-
24 vate sector adjustment factor established
25 by the Board pursuant to section

1 11A(c)(3) for the year that is the subject
2 of the audit; and

3 “(ii) audit the pro forma balance
4 sheet and income statement for the serv-
5 ices described in section 11A(b), including
6 the determination of revenue, expenses,
7 and income before income taxes for each
8 service listed in that section (in accordance
9 with the criteria specified in section
10 11A(c)(3)).

11 “(B) REPORT TO THE BOARD.—The audi-
12 tor shall report the results of the audit under
13 subparagraph (A)(ii) to the Board in written
14 form.

15 “(3) LIMITATION.—The evaluations and audits
16 required by this subsection shall not include deliber-
17 ations, decisions, or actions on monetary policy
18 matters, including discount authority under section
19 13, reserves of national banks, securities credit, in-
20 terest on deposits, and open market operations.

21 “(c) AUDITOR’S QUALIFICATIONS.—An independent
22 auditor referred to in this section shall—

23 “(1) be a certified public accountant and be
24 independent of the Federal Reserve System; and

1 “(2) meet any other qualifications that the
2 Board may establish.

3 “(d) CERTIFICATION REQUIRED.—In each audit re-
4 quired under this section, the auditor shall certify to the
5 Board that the auditor—

6 “(1) is a certified public accountant and is
7 independent of the Federal Reserve System; and

8 “(2) conducted the audit using generally accept-
9 ed auditing standards.

10 “(e) DETECTION OF ILLEGAL ACTS.—

11 “(1) AUDIT PROCEDURES.—Each audit re-
12 quired by this section shall include procedures de-
13 signed to provide reasonable assurance of detecting
14 illegal acts that would have a direct and material af-
15 fect on the determination of financial statement
16 amounts.

17 “(2) REPORTING POSSIBLE ILLEGALITIES.—If,
18 in the course of conducting an audit of the Federal
19 Reserve System or the Board as required by this
20 section, the independent auditor detects or otherwise
21 becomes aware of information indicating that an ille-
22 gal act (whether or not perceived to have an effect
23 on the financial statements of the Federal reserve
24 bank) has or may have occurred, the auditor—

1 “(A) shall determine whether it is likely
2 that the illegal act has occurred; and

3 “(B) shall, if the auditor determines that
4 the illegal act is likely to have occurred—

5 “(i) determine and consider the pos-
6 sible effect of the illegal act on the finan-
7 cial statements of the Federal Reserve Sys-
8 tem or the Board, as applicable; and

9 “(ii) as soon as practicable, inform
10 the Board that the illegal act is likely to
11 have occurred.

12 “(3) REPORT TO CONGRESS.—An independent
13 auditor under this section shall directly report, as
14 soon as practicable, its conclusions to the Committee
15 on Governmental Affairs of the Senate and the Com-
16 mittee on Government Reform of the House of Rep-
17 resentatives, with regard to any possible illegal act
18 that has been detected or has otherwise come to the
19 attention of the auditor during the course of an
20 audit of the Federal Reserve System or the Board
21 required by this section, if, after determining that
22 the Board is adequately informed with respect to
23 such possible illegal act, the auditor concludes
24 that—

1 “(A) the possible illegal act has a direct
2 and material effect on the financial statements
3 of the Federal Reserve System or the Board, as
4 applicable;

5 “(B) the Board has not taken timely and
6 appropriate remedial actions with respect to the
7 possible illegal act; and

8 “(C) the failure to take remedial action is
9 reasonably expected to warrant departure from
10 a standard report of the auditor when made, or
11 warrant resignation from the audits engage-
12 ment.

13 “(4) RESIGNATION OF AUDITOR.—If an inde-
14 pendent auditor resigns from its engagement to
15 audit the Federal Reserve System or the Board
16 under paragraph (3), the auditor shall furnish to the
17 Committee on Governmental Affairs of the Senate
18 and the Committee on Government Reform of the
19 House of Representatives, not later than 1 business
20 day after such resignation, a copy of the report of
21 the auditor (or documentation of any oral report
22 given).

23 “(f) RECORDKEEPING.—To facilitate compliance with
24 this section, the Board shall—

1 “(1) ensure that the books, records, and ac-
 2 counts of the Board are maintained and kept in suf-
 3 ficient detail to accurately and fairly reflect the
 4 transactions and dispositions of assets;

5 “(2) devise and maintain a system of internal
 6 controls sufficient to provide reasonable assurance
 7 that transactions are recorded as necessary to per-
 8 mit preparation of financial statements in con-
 9 formity with generally accepted accounting principles
 10 and to maintain accountability for assets;

11 “(3) ensure that access to assets of the Board
 12 is permitted only in accordance with general or spe-
 13 cific authorization of the Board; and

14 “(4) ensure that—

15 “(A) the recorded accountability for assets
 16 is compared with the existing assets at reason-
 17 able intervals; and

18 “(B) appropriate action is taken with re-
 19 spect to any differences.

20 “(g) REPORTS TO CONGRESS.—Not later than May
 21 31 of each year, the Board shall make available all audits
 22 and reports required by this section to the Committee on
 23 Governmental Affairs of the Senate and the Committee
 24 on Government Reform of the House of Representatives.”.

25 (b) FEDERAL RESERVE REQUIREMENTS.—

1 (1) CLARIFICATION OF FEE SCHEDULE RE-
2 QUIREMENTS.—

3 (A) IN GENERAL.—Section 11A(b) of the
4 Federal Reserve Act (12 U.S.C. 248a(b)) is
5 amended—

6 (i) by redesignating paragraphs (7)
7 and (8) as paragraphs (8) and (9), respec-
8 tively; and

9 (ii) by inserting after paragraph (6)
10 the following:

11 “(7) transportation of paper checks in the
12 clearing process;”.

13 (B) PUBLICATION OF REVISED SCHED-
14 ULE.—Not later than 60 days after the date of
15 enactment of this Act, the Board of Governors
16 of the Federal Reserve System shall publish a
17 revision of the schedule of fees required under
18 section 11A of the Federal Reserve Act that re-
19 flects the changes made in the schedule in ac-
20 cordance with the amendments made by sub-
21 paragraph (A) of this paragraph.

22 (2) CLARIFICATION OF APPLICABLE PRICING
23 CRITERIA.—Section 11A(c) of the Federal Reserve
24 Act (12 U.S.C. 248a(c)) is amended by striking
25 paragraph (3) and inserting the following:

1 “(3)(A) In each fiscal year, fees shall be estab-
2 lished for each service provided by the Federal re-
3 serve banks on the basis of all direct and indirect
4 costs actually incurred (excluding the effect of any
5 pension cost credit) in providing each of the services,
6 including interest on items credited prior to actual
7 collection, overhead, and an allocation of imputed
8 costs, which takes into account the taxes that would
9 have been paid and the return on capital that would
10 have been provided had the services been provided
11 by a private business firm.

12 “(B) The pricing principles referred to in sub-
13 paragraph (A) shall be carried out with due regard
14 to competitive factors and the provision of an ade-
15 quate level of such services nationwide.

16 “(C)(i) Not later than 1 year after the date of
17 enactment of the Financial Services Modernization
18 Act of 1999, and not less frequently than once every
19 3 years thereafter, the Board shall conduct a com-
20 prehensive review of the methodology used to cal-
21 culate the private sector adjustment factor pursuant
22 to section 11A(c)(3), including a public notice and
23 comment period.

24 “(ii) In conducting the review under clause (i),
25 the Board shall publish in the Federal Register all

1 elements of the methodology in use by the Board in
2 the calculation of the private sector adjustment fac-
3 tor pursuant to section 11A(c)(3) provide notice and
4 solicit public comment on the methodology, request-
5 ing commentators to identify areas of the method-
6 ology that are outdated, inappropriate, unnecessary,
7 or that contribute to an inaccurate result in the cal-
8 culation of the private sector adjustment factor.

9 “(iii) The Board shall—

10 “(I) publish in the Federal Register a sum-
11 mary of the comments received under this sub-
12 paragraph, identifying significant issues raised;
13 and

14 “(II) provide comment on such issues and
15 make changes to the methodology to the extent
16 that the Board considers to be appropriate.

17 “(iv) Not later than 30 days after the comple-
18 tion of each review under clause (i), the Board shall
19 submit to Congress a report which shall include—

20 “(I) a summary of any significant issues
21 raised by public comments received by the
22 Board under this subparagraph and the relative
23 merits of such issues; and

24 “(II) an analysis of whether the Board is
25 able to address the concerns raised, or whether

1 such concerns should be addressed by legisla-
2 tion.”.

3 **SEC. 318. STUDY AND REPORT ON ADVERTISING PRAC-**
4 **TICES OF ONLINE BROKERAGE SERVICES.**

5 (a) STUDY.—The Securities and Exchange Commis-
6 sion (hereafter in this section referred to as the “Commis-
7 sion”), in consultation with the National Association of
8 Securities Dealers and other interested parties, shall con-
9 duct a study of—

10 (1) the nature and content of advertising by on-
11 line brokerage services in all media, including tele-
12 vision, on the Internet, radio, and in print;

13 (2) if such advertising influences investors and
14 potential investors to make investment decisions,
15 and if such advertising improperly influences those
16 investors and potential investors to make inappro-
17 priate investment decisions;

18 (3) whether such advertising properly discloses
19 the risks associated with trading and investing in
20 the capital markets; and

21 (4) whether—

22 (A) there are appropriate regulatory mech-
23 anisms in place to prevent any improper or de-
24 ceptive advertising; and

1 (B) the Commission has or needs addi-
2 tional resources or authority to actively partici-
3 pate in such regulation.

4 (b) REPORT.—Not later than 180 days after the date
5 of enactment of this Act, the Commission shall submit a
6 report to the Congress on the results of the study con-
7 ducted under subsection (a), together with any rec-
8 ommendations for changes that it considers necessary to
9 protect investors and potential investors from improper or
10 deceptive advertising.

11 **SEC. 319. ELIGIBILITY OF COMMUNITY DEVELOPMENT FI-**
12 **NANCIAL INSTITUTION TO BORROW FROM**
13 **THE FEDERAL HOME LOAN BANK SYSTEM.**

14 Section 10b of the Federal Home Loan Bank Act (12
15 U.S.C. 1430b) is amended—

16 (1) in subsection (a) by striking the second sen-
17 tence and inserting the following two sentences:
18 “Such mortgagees must be (i) chartered institutions
19 having succession and (ii) subject to the inspection
20 and supervision of some governmental agency or a
21 community development financial institution (other
22 than an insured depository institution or a sub-
23 sidiary thereof) that, at the time the advance is
24 made, is certified under the Community Develop-
25 ment Banking and Financial Institutions Act of

1 1994. The principal activity of such mortgagees in
 2 the mortgage field must consist of lending their own
 3 funds and any advances may be subject to the same
 4 collateralization requirements as applied to other
 5 nonmember borrowers.”;

6 (2) in the last sentence of subsection (a) by re-
 7 placing the word “such” with “the same” and by re-
 8 placing the phrase “shall be determined by the
 9 board” with the phrase “are comparable extensions
 10 of credit to members”; and

11 (3) in subsection (b) by inserting in the first
 12 sentence between the words “agency” and “for” the
 13 following phrase: “or a certified community develop-
 14 ment financial institution”.

15 **TITLE IV—FEDERAL HOME LOAN** 16 **BANK SYSTEM MODERNIZATION**

17 **SEC. 401. SHORT TITLE.**

18 This title may be cited as the “Federal Home Loan
 19 Bank System Modernization Act of 1999”.

20 **SEC. 402. DEFINITIONS.**

21 Section 2 of the Federal Home Loan Bank Act (12
 22 U.S.C. 1422) is amended—

23 (1) in paragraph (1), by striking “term ‘Board’
 24 means” and inserting “terms ‘Finance Board’ and
 25 ‘Board’ mean”;

1 (2) by striking paragraph (3) and inserting the
2 following:

3 “(3) STATE.—The term ‘State’, in addition to
4 the States of the United States, includes the District
5 of Columbia, Guam, Puerto Rico, the United States
6 Virgin Islands, American Samoa, and the Common-
7 wealth of the Northern Mariana Islands.”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(13) COMMUNITY FINANCIAL INSTITUTION.—

11 “(A) IN GENERAL.—The term ‘community
12 financial institution’ means a member—

13 “(i) the deposits of which are insured
14 under the Federal Deposit Insurance Act;
15 and

16 “(ii) that has, as of the date of the
17 transaction at issue, less than
18 \$500,000,000 in average total assets,
19 based on an average of total assets over
20 the 3 years preceding that date.

21 “(B) ADJUSTMENTS.—The \$500,000,000
22 limit referred to in subparagraph (A)(ii) shall
23 be adjusted annually by the Finance Board,
24 based on the annual percentage increase, if any,
25 in the Consumer Price Index for all urban con-

1 sumers, as published by the Department of
2 Labor.”.

3 **SEC. 403. SAVINGS ASSOCIATION MEMBERSHIP.**

4 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
5 Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.
6 1464(f)) is amended to read as follows:

7 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
8 On and after June 1, 2000, a Federal savings association
9 may become a member of the Federal Home Loan Bank
10 System, and shall qualify for such membership in the
11 manner provided by the Federal Home Loan Bank Act.”.

12 (b) WITHDRAWAL.—Section 6(e) of the Federal
13 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
14 by striking “Any member other than a Federal savings
15 and loan association may withdraw” and inserting “Any
16 member may withdraw if, on the date of withdrawal there
17 is in effect a certification by the Finance Board that the
18 withdrawal will not cause the Federal Home Loan Bank
19 System to fail to meet its obligation under section
20 21B(f)(2)(C) to contribute to the debt service for the obli-
21 gations issued by the Resolution Funding Corporation”.

22 **SEC. 404. ADVANCES TO MEMBERS; COLLATERAL.**

23 (a) IN GENERAL.—Section 10(a) of the Federal
24 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

1 (1) by redesignating paragraphs (1) through
 2 (4) as subparagraphs (A) through (D), respectively,
 3 and indenting appropriately;

4 (2) by striking “(a) Each” and inserting the
 5 following:

6 “(a) IN GENERAL.—

7 “(1) ALL ADVANCES.—Each”;

8 (3) by striking the second sentence and insert-
 9 ing the following:

10 “(2) PURPOSES OF ADVANCES.—A long-term
 11 advance may only be made for the purposes of—

12 “(A) providing funds to any member for
 13 residential housing finance; and

14 “(B) providing funds to any community fi-
 15 nancial institution for small businesses, small
 16 farms, and small agri-businesses.”;

17 (4) by striking “A Bank” and inserting the fol-
 18 lowing:

19 “(3) COLLATERAL.—A Bank”;

20 (5) in paragraph (3) (as so designated by para-
 21 graph (4) of this subsection)—

22 (A) in subparagraph (C) (as so redesign-
 23 ated by paragraph (1) of this subsection) by
 24 striking “Deposits” and inserting “Cash or de-
 25 posits”;

1 (B) in subparagraph (D) (as so redesign-
 2 nated by paragraph (1) of this subsection), by
 3 striking the second sentence; and

4 (C) by inserting after subparagraph (D)
 5 (as so redesignated by paragraph (1) of this
 6 subsection) the following new subparagraph:

7 “(E) Secured loans for small business, ag-
 8 riculture, or securities representing a whole in-
 9 terest in such secured loans, in the case of any
 10 community financial institution.”;

11 (6) in paragraph (5)—

12 (A) in the second sentence, by striking
 13 “and the Board”;

14 (B) in the third sentence, by striking
 15 “Board” and inserting “Federal Home Loan
 16 Bank”; and

17 (C) by striking “(5) Paragraphs (1)
 18 through (4)” and inserting the following:

19 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
 20 graphs (A) through (E) of paragraph (3)”;

21 (7) by adding at the end the following:

22 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
 23 ARDS.—The Board may review the collateral stand-
 24 ards applicable to each Federal Home Loan Bank
 25 for the classes of collateral described in subpara-

1 graphs (D) and (E) of paragraph (3), and may, if
 2 necessary for safety and soundness purposes, require
 3 an increase in the collateral standards for any or all
 4 of those classes of collateral.

5 “(6) DEFINITIONS.—For purposes of this sub-
 6 section, the terms ‘small business’, ‘agriculture’,
 7 ‘small farm’, and ‘small agri-business’ shall have the
 8 meanings given those terms by rule or regulation of
 9 the Finance Board.”.

10 (b) CLERICAL AMENDMENT.—The section heading
 11 for section 10 of the Federal Home Loan Bank Act (12
 12 U.S.C. 1430) is amended to read as follows:

13 **“SEC. 10. ADVANCES TO MEMBERS.”.**

14 **SEC. 405. ELIGIBILITY CRITERIA.**

15 Section 4(a) of the Federal Home Loan Bank Act
 16 (12 U.S.C. 1424(a)) is amended—

17 (1) in paragraph (2)(A), by inserting, “(other
 18 than a community financial institution)” after “in-
 19 stitution”;

20 (2) in the matter immediately following para-
 21 graph (2)(C)—

22 (A) by striking “An insured” and inserting
 23 the following:

24 “(3) CERTAIN INSTITUTIONS.—An insured”;

25 and

1 (B) by striking “preceding sentence” and
2 inserting “paragraph (2)”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(4) LIMITED EXEMPTION FOR COMMUNITY FI-
6 NANCIAL INSTITUTIONS.—A community financial in-
7 stitution that otherwise meets the requirements of
8 paragraph (2) may become a member without regard
9 to the percentage of its total assets that is rep-
10 resented by residential mortgage loans, as described
11 in subparagraph (A) of paragraph (2).”.

12 **SEC. 406. MANAGEMENT OF BANKS.**

13 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
14 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
15 amended—

16 (1) by striking “(d) The term” and inserting
17 the following:

18 “(d) TERMS OF OFFICE.—The term”; and

19 (2) by striking “shall be two years”.

20 (b) COMPENSATION.—Section 7(i) of the Federal
21 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by
22 striking “subject to the approval of the board”.

23 (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-
24 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is

1 amended by striking sections 22A (12 U.S.C. 1442a) and
2 27 (12 U.S.C. 1447).

3 (d) SECTION 12.—Section 12 of the Federal Home
4 Loan Bank Act (12 U.S.C. 1432) is amended—

5 (1) in subsection (a)—

6 (A) by striking “, but, except” and all that
7 follows through “ten years”;

8 (B) by striking “subject to the approval of
9 the Board” each place that term appears;

10 (C) by striking “and, by its Board of direc-
11 tors,” and all that follows through “agent of
12 such bank,” and inserting “and, by the board
13 of directors of the Bank, to prescribe, amend,
14 and repeal by-laws governing the manner in
15 which its affairs may be administered, con-
16 sistent with applicable laws and regulations, as
17 administered by the Finance Board. No officer,
18 employee, attorney, or agent of a Federal Home
19 Loan Bank”; and

20 (D) by striking “Board of directors” each
21 place that term appears and inserting “board of
22 directors”; and

23 (2) in subsection (b), by striking “loans banks”
24 and inserting “loan banks”.

1 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
2 NANCE BOARD.—

3 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

4 Section 2B(a) of the Federal Home Loan Bank Act
5 (12 U.S.C. 1422b(a)) is amended by adding at the
6 end the following new paragraphs:

7 “(5) To issue and serve a notice of charges
8 upon a Federal Home Loan Bank or upon any exec-
9 utive officer or director of a Federal Home Loan
10 Bank if, in the determination of the Finance Board,
11 the Bank, executive officer, or director is engaging
12 or has engaged in, or the Finance Board has reason-
13 able cause to believe that the Bank, executive officer,
14 or director is about to engage in, any conduct that
15 violates any provision of this Act or any law, order,
16 rule, or regulation or any condition imposed in writ-
17 ing by the Finance Board in connection with the
18 granting of any application or other request by the
19 Bank, or any written agreement entered into by the
20 Bank with the agency, in accordance with the proce-
21 dures provided in section 1371(c) of the Federal
22 Housing Enterprises Financial Safety and Sound-
23 ness Act of 1992. Such authority includes the same
24 authority to take affirmative action to correct condi-
25 tions resulting from violations or practices or to

1 limit activities of a Bank or any executive officer or
2 director of a Bank as appropriate Federal banking
3 agencies have to take with respect to insured deposi-
4 tory institutions under paragraphs (6) and (7) of
5 section 8(b) of the Federal Deposit Insurance Act,
6 and to have all other powers, rights, and duties to
7 enforce this Act with respect to the Federal Home
8 Loan Banks and their executive officers and direc-
9 tors as the Office of Federal Housing Enterprise
10 Oversight has to enforce the Federal Housing Enter-
11 prises Financial Safety and Soundness Act of 1992,
12 the Federal National Mortgage Association Charter
13 Act, or the Federal Home Loan Mortgage Corpora-
14 tion Act with respect to the Federal housing enter-
15 prises under the Federal Housing Enterprises Fi-
16 nancial Safety and Soundness Act of 1992.

17 “(6) To sue and be sued, by and through its
18 own attorneys.”.

19 (2) TECHNICAL AMENDMENT.—Section 111 of
20 Public Law 93–495 (12 U.S.C. 250) is amended by
21 inserting “Federal Housing Finance Board,” after
22 “Director of the Office of Thrift Supervision,”.

23 (f) ELIGIBILITY TO SECURE ADVANCES.—

1 (1) SECTION 9.—Section 9 of the Federal
2 Home Loan Bank Act (12 U.S.C. 1429) is
3 amended—

4 (A) in the second sentence, by striking
5 “with the approval of the Board”; and

6 (B) in the third sentence, by striking “,
7 subject to the approval of the Board,”.

8 (2) SECTION 10.—Section 10 of the Federal
9 Home Loan Bank Act (12 U.S.C. 1430) is
10 amended—

11 (A) in subsection (c)—

12 (i) in the first sentence, by striking
13 “Board” and inserting “Federal Home
14 Loan Bank”; and

15 (ii) in the second sentence, by striking
16 “held by” and all that follows before the
17 period; and

18 (B) in subsection (d)—

19 (i) in the first sentence, by striking
20 “and the approval of the Board”; and

21 (ii) by striking “Subject to the ap-
22 proval of the Board, any” and inserting
23 “Any”.

24 (g) SECTION 16.—Section 16(a) of the Federal Home
25 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

1 (1) in the third sentence—

2 (A) by striking “net earnings” and insert-
 3 ing “previously retained earnings or current net
 4 earnings”; and

5 (B) by striking “, and then only with the
 6 approval of the Federal Housing Finance
 7 Board”; and

8 (2) by striking the fourth sentence.

9 (h) SECTION 18.—Section 18(b) of the Federal Home
 10 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
 11 ing paragraph (4).

12 **SEC. 407. RESOLUTION FUNDING CORPORATION.**

13 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-
 14 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is
 15 amended to read as follows:

16 “(C) PAYMENTS BY FEDERAL HOME LOAN
 17 BANKS.—

18 “(i) IN GENERAL.—To the extent that
 19 the amounts available pursuant to sub-
 20 paragraphs (A) and (B) are insufficient to
 21 cover the amount of interest payments,
 22 each Federal Home Loan Bank shall pay
 23 to the Funding Corporation in each cal-
 24 endar year, 20.75 percent of the net earn-
 25 ings of that Bank (after deducting ex-

1 penses relating to section 10(j) and oper-
2 ating expenses).

3 “(ii) ANNUAL DETERMINATION.—The
4 Board annually shall determine the extent
5 to which the value of the aggregate
6 amounts paid by the Federal Home Loan
7 Banks exceeds or falls short of the value of
8 an annuity of \$300,000,000 per year that
9 commences on the issuance date and ends
10 on the final scheduled maturity date of the
11 obligations, and shall select appropriate
12 present value factors for making such de-
13 terminations.

14 “(iii) PAYMENT TERM ALTER-
15 ATIONS.—The Board shall extend or short-
16 en the term of the payment obligations of
17 a Federal Home Loan Bank under this
18 subparagraph as necessary to ensure that
19 the value of all payments made by the
20 Banks is equivalent to the value of an an-
21 nuity referred to in clause (ii).

22 “(iv) TERM BEYOND MATURITY.—If
23 the Board extends the term of payment ob-
24 ligations beyond the final scheduled matu-
25 rity date for the obligations, each Federal

1 Home Loan Bank shall continue to pay
2 20.75 percent of its net earnings (after de-
3 ducting expenses relating to section 10(j)
4 and operating expenses) to the Treasury of
5 the United States until the value of all
6 such payments by the Federal Home Loan
7 Banks is equivalent to the value of an an-
8 nuity referred to in clause (ii). In the final
9 year in which the Federal Home Loan
10 Banks are required to make any payment
11 to the Treasury under this subparagraph,
12 if the dollar amount represented by 20.75
13 percent of the net earnings of the Federal
14 Home Loan Banks exceeds the remaining
15 obligation of the Banks to the Treasury,
16 the Finance Board shall reduce the per-
17 centage pro rata to a level sufficient to pay
18 the remaining obligation.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall become effective on June 1, 2000.
21 Payments made by a Federal Home Loan Bank before
22 that effective date shall be counted toward the total obliga-
23 tion of that Bank under section 21B(f)(2)(C) of the Fed-
24 eral Home Loan Bank Act, as amended by this section.

1 **SEC. 408. GAO STUDY ON FEDERAL HOME LOAN BANK SYS-**
2 **TEM CAPITAL.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study of—

5 (1) possible revisions to the capital structure of
6 the Federal Home Loan Bank System, including the
7 need for—

8 (A) more permanent capital;

9 (B) a statutory leverage ratio; and

10 (C) a risk-based capital structure; and

11 (2) what impact such revisions might have on
12 the operations of the Federal Home Loan Bank Sys-
13 tem, including the obligation of the Federal Home
14 Loan Bank System under section 21B(f)(2)(C) of
15 the Federal Home Loan Bank Act.

16 (b) REPORT TO CONGRESS.—Not later than 1 year
17 after the date of enactment of this Act, the Comptroller
18 General of the United States shall submit a report to the
19 Congress on the results of the study conducted under sub-
20 section (a).

21 **TITLE V—FUNCTIONAL REGULA-**
22 **TION OF BROKERS AND DEAL-**
23 **ERS**

24 **SEC. 501. DEFINITION OF BROKER.**

25 (a) It is the intention of this Act subject to carefully
26 defined exceptions which do not undermine the dominant

1 principle of functional regulation to ensure that securities
2 transactions effected by a bank are regulated by securities
3 regulators, notwithstanding any other provision of this
4 Act.

5 (b) Section 3(a)(4) of the Securities Exchange Act
6 of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as fol-
7 lows:

8 “(4) BROKER.—

9 “(A) IN GENERAL.—The term ‘broker’
10 means any person engaged in the business of
11 effecting transactions in securities for the ac-
12 count of others.

13 “(B) EXCEPTION FOR CERTAIN BANK AC-
14 TIVITIES.—A bank shall not be considered to be
15 a broker because the bank engages in any of
16 the following activities under the conditions de-
17 scribed:

18 “(i) THIRD PARTY BROKERAGE AR-
19 RANGEMENTS.—The bank enters into a
20 contractual or other arrangement with a
21 broker or dealer registered under this title
22 under which the broker or dealer offers
23 brokerage services on or off the premises
24 of the bank, if—

1 “(I) such broker or dealer is
2 clearly identified as the person per-
3 forming the brokerage services;

4 “(II) the broker or dealer per-
5 forms brokerage services in an area of
6 the bank that is clearly marked and,
7 to the extent practicable, physically
8 separate from the routine deposit-tak-
9 ing activities of the bank;

10 “(III) any materials used by the
11 bank to advertise or promote generally
12 the availability of brokerage services
13 under the contractual or other ar-
14 rangement clearly indicate that the
15 brokerage services are being provided
16 by the broker or dealer and not by the
17 bank;

18 “(IV) any materials used by the
19 bank to advertise or promote generally
20 the availability of brokerage services
21 under the contractual or other ar-
22 rangement are in compliance with the
23 Federal securities laws before dis-
24 tribution;

1 “(V) bank employees (other than
2 associated persons of a broker or deal-
3 er who are qualified pursuant to the
4 rules of a self-regulatory organization)
5 perform only clerical or ministerial
6 functions in connection with broker-
7 age transactions including scheduling
8 appointments with the associated per-
9 sons of a broker or dealer, except that
10 bank employees may forward cus-
11 tomer funds or securities and may de-
12 scribe in general terms the range of
13 investment vehicles available from the
14 bank and the broker or dealer under
15 the contractual or other arrangement;

16 “(VI) bank employees do not di-
17 rectly receive incentive compensation
18 for any brokerage transaction, unless
19 such employees are associated persons
20 of a broker or dealer and are qualified
21 pursuant to the rules of a self-regu-
22 latory organization, except that the
23 bank employees may receive com-
24 pensation for the referral of any cus-
25 tomer if the compensation is a nomi-

1 nal one-time cash fee of a fixed dollar
2 amount and the payment of the fee is
3 not contingent on whether the referral
4 results in a transaction;

5 “(VII) such services are provided
6 by the broker or dealer on a basis in
7 which all customers that receive any
8 services are fully disclosed to the
9 broker or dealer;

10 “(VIII) the bank does not carry
11 a securities account of the customer,
12 except in a customary custodian or
13 trustee capacity; and

14 “(IX) the bank, broker, or dealer
15 informs each customer that the bro-
16 kerage services are provided by the
17 broker or dealer and not by the bank,
18 and that the securities are not depos-
19 its or other obligations of the bank,
20 are not guaranteed by the bank, and
21 are not insured by the Federal De-
22 posit Insurance Corporation.

23 “(ii) TRUST ACTIVITIES.—The bank
24 effects transactions in a trustee capacity,
25 or effects transactions in a fiduciary capac-

1 ity in its trust department or other depart-
2 ment that is regularly examined by bank
3 examiners for compliance with fiduciary
4 principles and standards, and does not
5 publicly solicit brokerage business, other
6 than by advertising that it effects trans-
7 actions in securities in conjunction with
8 advertising its other trust activities.

9 “(iii) PERMISSIBLE SECURITIES
10 TRANSACTIONS.—The bank effects trans-
11 actions in—

12 “(I) commercial paper, bankers
13 acceptances, or commercial bills;

14 “(II) exempted securities;

15 “(III) qualified Canadian Gov-
16 ernment obligations, as defined in sec-
17 tion 5136 of the Revised Statutes of
18 the United States, in conformity with
19 section 15C of this title and the rules
20 and regulations thereunder, or obliga-
21 tions of the North American Develop-
22 ment Bank; or

23 “(IV) any standardized, credit
24 enhanced debt security issued by a
25 foreign government pursuant to the

1 March 1989 plan of then Secretary of
2 the Treasury Brady, used by such for-
3 eign government to retire outstanding
4 commercial bank loans.

5 “(iv) CERTAIN STOCK PURCHASE
6 PLANS.—

7 “(I) EMPLOYEE BENEFIT
8 PLANS.—The bank effects trans-
9 actions, as part of its transfer agency
10 activities, in the securities of an issuer
11 as part of any pension, retirement,
12 profit-sharing, bonus, thrift, savings,
13 incentive, or other similar benefit plan
14 for the employees of that issuer or its
15 subsidiaries, if the bank does not so-
16 licit transactions or provide invest-
17 ment advice with respect to the pur-
18 chase or sale of securities in connec-
19 tion with the plan.

20 “(II) DIVIDEND REINVESTMENT
21 PLANS.—The bank effects trans-
22 actions, as part of its transfer agency
23 activities, in the securities of an issuer
24 as part of that issuer’s dividend rein-
25 vestment plan, if—

1 “(aa) the bank does not so-
2 licit transactions or provide in-
3 vestment advice with respect to
4 the purchase or sale of securities
5 in connection with the plan; and

6 “(bb) the bank does not net
7 shareholders’ buy and sell orders,
8 other than for programs for odd-
9 lot holders or plans registered
10 with the Commission.

11 “(III) ISSUER PLANS.—The bank
12 effects transactions, as part of its
13 transfer agency activities, in the secu-
14 rities of an issuer as part of a plan or
15 program for the purchase or sale of
16 that issuer’s shares, if—

17 “(aa) the bank does not so-
18 licit transactions or provide in-
19 vestment advice with respect to
20 the purchase or sale of securities
21 in connection with the plan or
22 program; and

23 “(bb) the bank does not net
24 shareholders’ buy and sell orders,
25 other than for programs for odd-

1 lot holders or plans registered
2 with the Commission.

3 “(IV) PERMISSIBLE DELIVERY
4 OF MATERIALS.—The exception to
5 being considered a broker for a bank
6 engaged in activities described in sub-
7 clauses (I), (II), and (III) will not be
8 affected by delivery of written or elec-
9 tronic plan materials by a bank to em-
10 ployees of the issuer, shareholders of
11 the issuer, or members of affinity
12 groups of the issuer, so long as such
13 materials are—

14 “(aa) comparable in scope or
15 nature to that permitted by the
16 Commission as of the date of the
17 enactment of the Financial Serv-
18 ices Modernization Act of 1999;
19 or

20 “(bb) otherwise permitted by
21 the Commission.

22 “(v) SWEEP ACCOUNTS.—The bank
23 effects transactions as part of a program
24 for the investment or reinvestment of bank
25 deposit funds into any no-load, open-end

1 management investment company reg-
2 istered under the Investment Company Act
3 of 1940 that holds itself out as a money
4 market fund.

5 “(vi) AFFILIATE TRANSACTIONS.—
6 The bank effects transactions for the ac-
7 count of any affiliate of the bank (as de-
8 fined in section 2 of the Bank Holding
9 Company Act of 1956) other than—

10 “(I) a registered broker or deal-
11 er; or

12 “(II) an affiliate that is engaged
13 in merchant banking, as described in
14 section 4(k)(4)(H) of the Bank Hold-
15 ing Company Act of 1956.

16 “(vii) PRIVATE SECURITIES OFFER-
17 INGS.—The bank effects sales as part of a
18 primary offering of securities not involving
19 a public offering, pursuant to section 3(b),
20 4(2), or 4(6) of the Securities Act of 1933,
21 or the rules and regulations issued there-
22 under.

23 “(viii) SAFEKEEPING AND CUSTODY
24 ACTIVITIES.—

1 “(I) IN GENERAL.—The bank, as
2 part of customary banking activities—

3 “(aa) provides safekeeping
4 or custody services with respect
5 to securities, including the exer-
6 cise of warrants and other rights
7 on behalf of customers;

8 “(bb) facilitates the transfer
9 of funds or securities, as a custo-
10 dian or a clearing agency, in con-
11 nection with the clearance and
12 settlement of its customers’
13 transactions in securities;

14 “(cc) effects securities lend-
15 ing or borrowing transactions
16 with or on behalf of customers as
17 part of services provided to cus-
18 tomers pursuant to division (aa)
19 or (bb) or invests cash collateral
20 pledged in connection with such
21 transactions; or

22 “(dd) holds securities
23 pledged by a customer to another
24 person or securities subject to
25 purchase or resale agreements in-

1 volving a customer, or facilitates
2 the pledging or transfer of such
3 securities by book entry or as
4 otherwise provided under applica-
5 ble law.

6 “(II) EXCEPTION FOR CARRYING
7 BROKER ACTIVITIES.—The exception
8 to being considered a broker for a
9 bank engaged in activities described in
10 subclause (I) shall not apply if the
11 bank, in connection with such activi-
12 ties, acts in the United States as a
13 carrying broker (as such term, and
14 different formulations thereof, are
15 used in section 15(c)(3) and the rules
16 and regulations thereunder) for any
17 broker or dealer, unless such carrying
18 broker activities are engaged in with
19 respect to government securities (as
20 defined in paragraph (42) of this sub-
21 section).

22 “(ix) BANKING PRODUCTS.—The bank
23 effects transactions in traditional banking
24 products, as defined in section 503(a) of

1 the Financial Services Modernization Act
2 of 1999.

3 “(x) DE MINIMIS EXCEPTION.—The
4 bank effects, other than in transactions re-
5 ferred to in clauses (i) through (ix), not
6 more than 500 transactions in securities in
7 any calendar year, and such transactions
8 are not effected by an employee of the
9 bank who is also an employee of a broker
10 or dealer.

11 “(C) EXECUTION BY BROKER OR DEAL-
12 ER.—The exception to being considered a
13 broker for a bank engaged in activities de-
14 scribed in clauses (ii), (iv), and (viii) of sub-
15 paragraph (B) shall not apply if the activities
16 described in such provisions result in the trade
17 in the United States of any security that is a
18 publicly traded security in the United States,
19 unless—

20 “(i) the bank directs such trade to a
21 registered broker or dealer for execution;

22 “(ii) the trade is a cross trade or
23 other substantially similar trade of a secu-
24 rity that—

1 “(I) is made by the bank or be-
 2 tween the bank and an affiliated fidu-
 3 ciary; and

4 “(II) is not in contravention of
 5 fiduciary principles established under
 6 applicable Federal or State law; or

7 “(iii) the trade is conducted in some
 8 other manner permitted under such rules,
 9 regulations, or orders as the Commission
 10 may prescribe or issue.

11 “(D) NO EFFECT OF BANK EXEMPTIONS
 12 ON OTHER COMMISSION AUTHORITY.—The ex-
 13 ception to being considered a broker for a bank
 14 engaged in activities described in subpara-
 15 graphs (B) and (C) shall not affect the author-
 16 ity of the Commission under any other provi-
 17 sion of this title or any other securities law.

18 “(E) FIDUCIARY CAPACITY.—For purposes
 19 of subparagraph (B)(ii) of this paragraph and
 20 paragraph (5)(C), the term ‘fiduciary capacity’
 21 means—

22 “(i) in the capacity as trustee, execu-
 23 tor, administrator, registrar of stocks and
 24 bonds, transfer agent, guardian, assignee,
 25 receiver, or custodian, either under a uni-

1 form gift to minor act or for an individual
 2 retirement account, or as an investment
 3 adviser if the bank receives a fee for its in-
 4 vestment advice or services, or as a service
 5 provider to any pension, retirement, profit
 6 sharing, bonus, thrift, savings, incentive,
 7 or other similar benefit plan;

8 “(ii) in any capacity in which the
 9 bank possesses investment discretion on
 10 behalf of another; or

11 “(iii) in any other similar capacity.

12 “(F) EXCEPTION FOR ENTITIES SUBJECT
 13 TO SECTION 15(e).—The term ‘broker’ does not
 14 include a bank that—

15 “(i) was, on the day before the date of
 16 enactment of the Financial Services Mod-
 17 ernization Act of 1999, subject to section
 18 15(e); and

19 “(ii) is subject to such restrictions
 20 and requirements as the Commission con-
 21 siders appropriate.”.

22 **SEC. 502. DEFINITION OF DEALER.**

23 Section 3(a)(5) of the Securities Exchange Act of
 24 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

25 “(5) DEALER.—

1 “(A) IN GENERAL.—The term ‘dealer’
 2 means any person engaged in the business of
 3 buying and selling securities for such person’s
 4 own account through a broker or otherwise.

5 “(B) EXCEPTION FOR PERSON NOT EN-
 6 GAGED IN THE BUSINESS OF DEALING.—The
 7 term ‘dealer’ does not include a person that
 8 buys or sells securities for such person’s own
 9 account, either individually or in a fiduciary ca-
 10 pacity, but not as a part of a regular business.

11 “(C) EXCEPTION FOR CERTAIN BANK AC-
 12 TIVITIES.—A bank shall not be considered to be
 13 a dealer because the bank engages in any of the
 14 following activities under the conditions de-
 15 scribed:

16 “(i) PERMISSIBLE SECURITIES TRANS-
 17 ACTIONS.—The bank buys or sells—

18 “(I) commercial paper, bankers
 19 acceptances, or commercial bills;

20 “(II) exempted securities;

21 “(III) qualified Canadian govern-
 22 ment obligations as defined in section
 23 5136 of the Revised Statutes of the
 24 United States, in conformity with sec-
 25 tion 15C of this title and the rules

1 and regulations thereunder, or obliga-
2 tions of the North American Develop-
3 ment Bank; or

4 “(IV) any standardized, credit
5 enhanced debt security issued by a
6 foreign government pursuant to the
7 March 1989 plan of then Secretary of
8 the Treasury Brady, used by such for-
9 eign government to retire outstanding
10 commercial bank loans.

11 “(ii) INVESTMENT, TRUSTEE, AND FI-
12 DUCIARY TRANSACTIONS.—The bank buys
13 or sells securities for investment
14 purposes—

15 “(I) for the bank; or

16 “(II) for accounts for which the
17 bank acts in a trustee capacity or fi-
18 duciary capacity.

19 “(iii) ASSET-BACKED TRANS-
20 ACTIONS.—The bank engages in the
21 issuance or sale to qualified investors,
22 through a grantor trust or otherwise, of se-
23 curities backed by or representing an inter-
24 est in notes, drafts, acceptances, loans,
25 leases, receivables, other obligations, or

1 pools of any such obligations predomi-
 2 nantly originated by the bank, or a syn-
 3 dicate of banks of which the bank is a
 4 member, or an affiliate of any such bank
 5 other than a broker or dealer.

6 “(iv) BANKING PRODUCTS.—The bank
 7 buys or sells traditional banking products,
 8 as defined in section 503(a) of the Finan-
 9 cial Services Modernization Act of 1999.”.

10 **SEC. 503. DEFINITION AND TREATMENT OF BANKING PROD-**
 11 **UCTS.**

12 (a) DEFINITION OF TRADITIONAL BANKING PROD-
 13 UCT.—For purposes of this title and paragraphs (4) and
 14 (5) of section 3(a) of the Securities Exchange Act of 1934
 15 (15 U.S.C. 78c(a)(4), (5)), as amended by this title, the
 16 term “traditional banking product” means—

17 (1) a deposit account, savings account, certifi-
 18 cate of deposit, or other deposit instrument issued
 19 by a bank;

20 (2) a banker’s acceptance;

21 (3) a letter of credit issued or loan made by a
 22 bank;

23 (4) a debit account at a bank arising from a
 24 credit card or similar arrangement;

1 (5) a participation in a loan which the bank or
2 an affiliate of the bank (other than a broker or deal-
3 er) funds, participates in, or owns that is sold—

4 (A) to qualified investors; or

5 (B) to other persons that—

6 (i) have the opportunity to review and
7 assess any material information, including
8 information regarding the borrower's cred-
9 itworthiness; and

10 (ii) based on such factors as financial
11 sophistication, net worth, and knowledge
12 and experience in financial matters, have
13 the capability to evaluate the information
14 available, as determined under generally
15 applicable banking standards or guidelines;
16 and

17 (6) any swap agreement (as defined in section
18 11(e)(8)(D)(vi) of the Federal Deposit Insurance
19 Act), including credit swaps and equity swaps, un-
20 less the appropriate Federal banking agency deter-
21 mines that credit swaps and equity swaps shall not
22 be included in the definition of such term.

23 (b) TRANSACTIONS INVOLVING HYBRID PROD-
24 UCTS.—

1 (1) COMMISSION AUTHORITY.—The Commission
2 may, with the concurrence of the Board, determine,
3 by regulation published in the Federal Register, that
4 a bank that effects transactions in, or buys or sells,
5 a new product should be subject to the registration
6 requirements of this section.

7 (2) LIMITATION.—The Commission may not
8 impose the registration requirements of this section
9 on any bank that effects transactions in, or buys or
10 sells, a product under this subsection unless the
11 Commission, with the concurrence of the Board, de-
12 termines in the regulations described in paragraph
13 (1) that—

14 (A) the subject product is a new product;

15 (B) the subject product is a security; and

16 (C) imposing the registration requirements

17 of this section is necessary or appropriate in the

18 public interest and for the protection of inves-

19 tors.

20 (c) CLASSIFICATION LIMITED.—Classification of a

21 particular product or instrument as a traditional banking

22 product pursuant to this section shall not be construed

23 as finding or implying that such product or instrument

24 is or is not a security for any purpose under the securities

25 laws, or is or is not an account, agreement, contract, or

1 transaction for any purpose under the Commodity Ex-
2 change Act.

3 (d) NO LIMITATION ON OTHER AUTHORITY TO
4 CHALLENGE.—Nothing in this section shall affect the
5 right or authority of the Board, any appropriate Federal
6 banking agency, or any interested party under any other
7 provision of law to object to or seek judicial review as to
8 whether a product or instrument is or is not appropriately
9 classified as a traditional banking product under sub-
10 section (a).

11 (e) OTHER DEFINITIONS.—For purposes of this
12 section—

13 (1) the term “appropriate Federal banking
14 agency” has the same meaning as in section 3 of the
15 Federal Deposit Insurance Act;

16 (2) the term “bank” has the same meaning as
17 in section 3(a)(6) of the Securities Exchange Act of
18 1934;

19 (3) the term “Board” means the Board of Gov-
20 ernors of the Federal Reserve System;

21 (4) the term “Commission” means the Securi-
22 ties and Exchange Commission;

23 (5) the term “government securities” has the
24 same meaning as in section 3(a)(42) of the Securi-
25 ties Exchange Act of 1934, and, for purposes of this

1 subsection, commercial paper, bankers acceptances,
 2 and commercial bills shall be treated in the same
 3 manner as government securities;

4 (6) the term “new product” means a product or
 5 instrument offered or provided by a bank that—

6 (i) was not subject to regulation by the
 7 Commission as a security under the Federal se-
 8 curities laws before the date of enactment of
 9 this Act; and

10 (ii) is not a traditional banking product;
 11 and

12 (7) the term “qualified investor” has the same
 13 meaning as in section 3(a)(54) of the Securities Ex-
 14 change Act of 1934, as added by this title.

15 **SEC. 504. QUALIFIED INVESTOR DEFINED.**

16 Section 3(a) of the Securities Exchange Act of 1934
 17 (15 U.S.C. 78c(a)) is amended by adding at the end the
 18 following new paragraphs:

19 “(54) QUALIFIED INVESTOR.—

20 “(A) DEFINITION.—The term ‘qualified in-
 21 vestor’ means—

22 “(i) any investment company reg-
 23 istered with the Commission under section
 24 8 of the Investment Company Act of 1940;

1 “(ii) any issuer eligible for an exclu-
2 sion from the definition of ‘investment
3 company’ pursuant to section 3(c)(7) of
4 the Investment Company Act of 1940;

5 “(iii) any bank (as defined in para-
6 graph (6)), savings association (as defined
7 in section 3(b) of the Federal Deposit In-
8 surance Act), broker, dealer, insurance
9 company (as defined in section 2(a)(13) of
10 the Securities Act of 1933), or business de-
11 velopment company (as defined in section
12 2(a)(48) of the Investment Company Act
13 of 1940);

14 “(iv) any small business investment
15 company licensed by the Small Business
16 Administration under subsection (c) or (d)
17 of section 301 of the Small Business In-
18 vestment Act of 1958;

19 “(v) any State sponsored employee
20 benefit plan, or any other employee benefit
21 plan, within the meaning of the Employee
22 Retirement Income Security Act of 1974,
23 other than an individual retirement ac-
24 count, if the investment decisions are made
25 by a plan fiduciary, as defined in section

1 3(21) of that Act, which is either a bank,
2 savings and loan association, insurance
3 company, or registered investment adviser;

4 “(vi) any trust whose purchases of se-
5 curities are directed by a person described
6 in clauses (i) through (v) of this subpara-
7 graph;

8 “(vii) any market intermediary that is
9 exempt under section 3(c)(2) of the Invest-
10 ment Company Act of 1940;

11 “(viii) any associated person of a
12 broker or dealer, other than a natural per-
13 son;

14 “(ix) any foreign bank (as defined in
15 section 1(b)(7) of the International Bank-
16 ing Act of 1978);

17 “(x) the government of any foreign
18 country;

19 “(xi) any corporation, company, or
20 partnership that owns and invests on a dis-
21 cretionary basis, not less than \$10,000,000
22 in investments;

23 “(xii) any natural person who owns
24 and invests on a discretionary basis, not
25 less than \$10,000,000 in investments;

1 “(xiii) any government or political
 2 subdivision, agency, or instrumentality of a
 3 government who owns and invests on a dis-
 4 cretionary basis, not less than \$50,000,000
 5 in investments; or

6 “(xiv) any multinational or supra-
 7 national entity or any agency or instru-
 8 mentality thereof.

9 “(B) ADDITIONAL AUTHORITY.—The Com-
 10 mission may, by rule or order, define a ‘quali-
 11 fied investor’ as any other person not described
 12 in subparagraph (A), taking into consideration
 13 such factors as the financial sophistication of
 14 the person, net worth, and knowledge and expe-
 15 rience in financial matters.”.

16 **SEC. 505. GOVERNMENT SECURITIES DEFINED.**

17 Section 3(a)(42) of the Securities Exchange Act of
 18 1934 (15 U.S.C. 78c(a)(42)) is amended—

19 (1) by striking “or” at the end of subparagraph
 20 (C);

21 (2) by striking the period at the end of sub-
 22 paragraph (D) and inserting “; or”; and

23 (3) by adding at the end the following new sub-
 24 paragraph:

1 “(E) for purposes of section 15C, as ap-
 2 plied to a bank, a qualified Canadian Govern-
 3 ment obligation, as defined in section 5136 of
 4 the Revised Statutes of the United States.”.

5 **SEC. 506. EFFECTIVE DATE.**

6 This title shall become effective at the end of the 1-
 7 year period beginning on the date of enactment of this
 8 Act.

9 **SEC. 507. RULE OF CONSTRUCTION.**

10 Nothing in this title shall supersede, affect, or other-
 11 wise limit the scope and applicability of the Commodity
 12 Exchange Act (7 U.S.C. 1 et seq.).

13 **TITLE VI—UNITARY SAVINGS**
 14 **AND LOAN HOLDING COMPA-**
 15 **NIES**

16 **SEC. 601. PREVENTION OF CREATION OF NEW S&L HOLD-**
 17 **ING COMPANIES WITH COMMERCIAL AFFILI-**
 18 **ATES.**

19 (a) IN GENERAL.—Section 10(c) of the Home Own-
 20 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding
 21 at the end the following new paragraph:

22 “(9) PREVENTION OF NEW AFFILIATIONS BE-
 23 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL
 24 FIRMS.—

1 “(A) IN GENERAL.—Notwithstanding para-
2 graph (3), no company may directly or indi-
3 rectly, including through any merger, consolida-
4 tion, or other type of business combination, ac-
5 quire control of a savings association after May
6 4, 1999, unless the company is engaged, di-
7 rectly or indirectly (including through a sub-
8 sidiary other than a savings association), only
9 in activities that are permitted—

10 “(i) under paragraph (1)(C) or (2) of
11 this subsection; or

12 “(ii) for financial holding companies
13 under section 4(k) of the Bank Holding
14 Company Act of 1956.

15 “(B) PREVENTION OF NEW COMMERCIAL
16 AFFILIATIONS.—Notwithstanding paragraph
17 (3), no savings and loan holding company may
18 engage directly or indirectly (including through
19 a subsidiary other than a savings association)
20 in any activity other than as described in
21 clauses (i) and (ii) of subparagraph (A).

22 “(C) PRESERVATION OF AUTHORITY OF
23 EXISTING UNITARY S&L HOLDING COMPA-
24 NIES.—Subparagraphs (A) and (B) do not
25 apply with respect to any company that was a

1 savings and loan holding company on May 4,
2 1999, or that becomes a savings and loan hold-
3 ing company pursuant to an application pend-
4 ing before the Office on or before that date, and
5 that—

6 “(i) meets and continues to meet the
7 requirements of paragraph (3); and

8 “(ii) continues to control not fewer
9 than 1 savings association that it con-
10 trolled on May 4, 1999, or that it acquired
11 pursuant to an application pending before
12 the Office on or before that date, or the
13 successor to such savings association.

14 “(D) CORPORATE REORGANIZATIONS PER-
15 MITTED.—This paragraph does not prevent a
16 transaction that—

17 “(i) involves solely a company under
18 common control with a savings and loan
19 holding company from acquiring, directly
20 or indirectly, control of the savings and
21 loan holding company or any savings asso-
22 ciation that is already a subsidiary of the
23 savings and loan holding company; or

24 “(ii) involves solely a merger, consoli-
25 dation, or other type of business combina-

tion as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

“(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

“(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

“(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of

the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

“(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.”.

(b) CONFORMING AMENDMENT.—Section 10(o)(5)(E) of the Home Owners’ Loan Act (15 U.S.C. 1467a(o)(5)(E)) is amended by striking “, except subparagraph (B)” and inserting “or (c)(9)(A)(ii)”.

SEC. 602. OPTIONAL CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS.

Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

1 “(5) CONVERSION TO NATIONAL BANK.—Not-
 2 withstanding any other provision of law, any Federal
 3 savings association chartered and in operation prior
 4 to the date of enactment of the Financial Services
 5 Modernization Act of 1999, with branches in one or
 6 more States, may convert, at its option, with the ap-
 7 proval of the Comptroller of the Currency, into one
 8 or more National banks, each of which may encom-
 9 pass one or more of the branches of the Federal sav-
 10 ings association in one or more States; but only if
 11 the resulting National bank or banks will meet any
 12 and all financial, management, and capital require-
 13 ments applicable to National banks.”.

14 **TITLE VII—ATM FEE REFORM**

15 **SEC. 701. SHORT TITLE.**

16 This title may be cited as the “ATM Fee Reform Act
 17 of 1999”.

18 **SEC. 702. ELECTRONIC FUND TRANSFER FEE DISCLOSURES**

19 **AT ANY HOST ATM.**

20 Section 904(d) of the Electronic Fund Transfer Act
 21 (15 U.S.C. 1693b(d)) is amended by adding at the end
 22 the following:

23 “(3) FEE DISCLOSURES AT AUTOMATED TELL-
 24 ER, MACHINES.—

1 “(A) IN GENERAL.—The regulations pre-
 2 scribed under paragraph (1) shall require any
 3 automated teller machine operator who imposes
 4 a fee on any consumer for providing host trans-
 5 fer services to such consumer to provide notice
 6 in accordance with subparagraph (B) to the
 7 consumer (at the time the service is provided)
 8 of—

9 “(i) the fact that a fee is imposed by
 10 such operator for providing the service;
 11 and

12 “(ii) the amount of any such fee.

13 “(B) NOTICE REQUIREMENTS.—

14 “(i) ON THE MACHINE.—The notice
 15 required under clause (i) of subparagraph
 16 (A) with respect to any fee described in
 17 such subparagraph shall be posted in a
 18 prominent and conspicuous location on or
 19 at the automated teller machine at which
 20 the electronic fund transfer is initiated by
 21 the consumer; and

22 “(ii) ON THE SCREEN.—The notice
 23 required under clauses (i) and (ii) of sub-
 24 paragraph (A) with respect to any fee de-
 25 scribed in such subparagraph shall appear

1 on the screen of the automated teller ma-
2 chine, or on a paper notice issued from
3 such machine, after the transaction is initi-
4 ated and before the consumer is irrev-
5 ocably committed to completing the trans-
6 action.

7 “(C) PROHIBITION ON FEES NOT PROP-
8 ERLY DISCLOSED AND EXPLICITLY ASSUMED BY
9 CONSUMER.—No fee may be imposed by any
10 automated teller machine operator in connec-
11 tion with any electronic fund transfer initiated
12 by a consumer for which a notice is required
13 under subparagraph (A), unless—

14 “(i) the consumer receives such notice
15 in accordance with subparagraph (B); and

16 “(ii) the consumer elects to continue
17 in the manner necessary to effect the
18 transaction after receiving such notice.

19 “(D) DEFINITIONS.—For purposes of this
20 paragraph, the following definitions shall apply:

21 “(i) ELECTRONIC FUND TRANSFER.—
22 The term ‘electronic fund transfer’ in-
23 cludes a transaction which involves a bal-
24 ance inquiry initiated by a consumer in the
25 same manner as an electronic fund trans-

fer, whether or not the consumer initiates
a transfer of funds in the course of the
transaction.

“(ii) AUTOMATED TELLER MACHINE
OPERATOR.—The term ‘automated teller
machine operator’ means any person
who—

“(I) operates an automated teller
machine at which consumers initiate
electronic fund transfers; and

“(II) is not the financial institu-
tion which holds the account of such
consumer from which the transfer is
made.

“(iii) HOST TRANSFER SERVICES.—
The term ‘host transfer services’ means
any electronic fund transfer made by an
automated teller machine operator in con-
nection with a transaction initiated by a
consumer at an automated teller machine
operated by such operator.”.

**SEC. 703. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS
WHEN ATM CARD IS ISSUED.**

Section 905(a) of the Electronic Fund Transfer Act
(15 U.S.C. 1693c(a)) is amended—

1 (1) by striking “and” at the end of paragraph
2 (8);

3 (2) by striking the period at the end of para-
4 graph (9) and inserting “; and”; and

5 (3) by inserting after paragraph (9) the fol-
6 lowing:

7 “(10) a notice to the consumer that a fee may
8 be imposed by—

9 “(A) an automated teller machine operator
10 (as defined in section 904(d)(3)(D)(ii)) if the
11 consumer initiates a transfer from an auto-
12 mated teller machine which is not operated by
13 the person issuing the card or other means of
14 access; and

15 “(B) any national, regional, or local net-
16 work utilized to effect the transaction.”.

17 **SEC. 704. FEASIBILITY STUDY.**

18 (a) IN GENERAL.—The Comptroller General of the
19 United States shall conduct a study of the feasibility of
20 requiring, in connection with any electronic and transfer
21 initiated by a consumer through the use of an automated
22 teller machine—

23 (1) a notice to be provided to the consumer be-
24 fore the consumer is irrevocably committed to com-
25 pleting the transaction, which clearly states the

1 amount of any fee which will be imposed upon the
2 consummation of the transaction by—

3 (A) any automated teller machine operator
4 (as defined in section 904(d)(2)(D)(ii) of the
5 Electronic Fund Transfer Act) involved in the
6 transaction;

7 (B) the financial institution holding the ac-
8 count of the consumer;

9 (C) any national, regional, or local network
10 utilized to effect the transaction; and

11 (D) any other party involved in the trans-
12 fer; and

13 (2) the consumer to elect to consummate the
14 transaction after receiving the notice described in
15 paragraph (1).

16 (b) FACTORS TO BE CONSIDERED.—In conducting
17 the study required under subsection (a) with regard to the
18 notice requirement described in such subsection, the
19 Comptroller General shall consider the following factors:

20 (1) The availability of appropriate technology.

21 (2) Implementation and operating costs.

22 (3) The competitive impact any such notice re-
23 quirement would have on various sizes and types of
24 institutions, if implemented.

1 (4) The period of time which would be reason-
2 able for implementing any such notice requirement.

3 (5) The extent to which consumers would ben-
4 efit from any such notice requirement.

5 (6) Any other factor the Comptroller General
6 determines to be appropriate in analyzing the feasi-
7 bility of imposing any such notice requirement.

8 (c) REPORT TO CONGRESS.—Before the end of the
9 6-month period beginning on the date of the enactment
10 of this Act, the Comptroller General shall submit a report
11 to the Congress containing—

12 (1) the findings and conclusions of the Comp-
13 troller General in connection with the study required
14 under subsection (a); and

15 (2) the recommendation of the Comptroller
16 General with regard to the question of whether a no-
17 tice requirement described in subsection (a) should
18 be implemented and, if so, how such requirement
19 should be implemented.

20 **SEC. 705. NO LIABILITY IF POSTED NOTICES ARE DAM-**
21 **AGED.**

22 Section 910 of the Electronic Fund Transfer Act (15
23 U.S.C. 1693h) is amended by adding at the end the fol-
24 lowing new subsection:

1 “(d) EXCEPTION FOR DAMAGED NOTICES.—If the
2 notice required to be posted pursuant to section
3 904(d)(3)(B)(i) by an automated teller machine operator
4 has been posted by such operator in compliance with such
5 section and the notice is subsequently removed, damaged,
6 or altered by any person other than the operator of the
7 automated teller machine, the operator shall have no li-
8 ability under this section for failure to comply with section
9 904(d)(3)(B)(i).”.

Passed the Senate May 6, 1999.

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

S. 900

AN ACT

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes.

S 900 ES—2
S 900 ES—3
S 900 ES—4
S 900 ES—5
S 900 ES—6
S 900 ES—7
S 900 ES—8
S 900 ES—9
S 900 ES—10
S 900 ES—11
S 900 ES—12
S 900 ES—13
S 900 ES—14
S 900 ES—15